



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

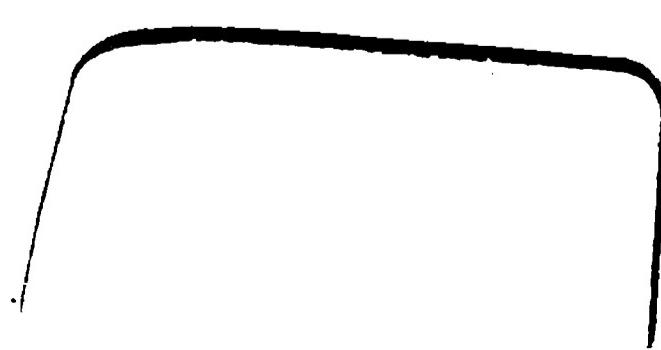
- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

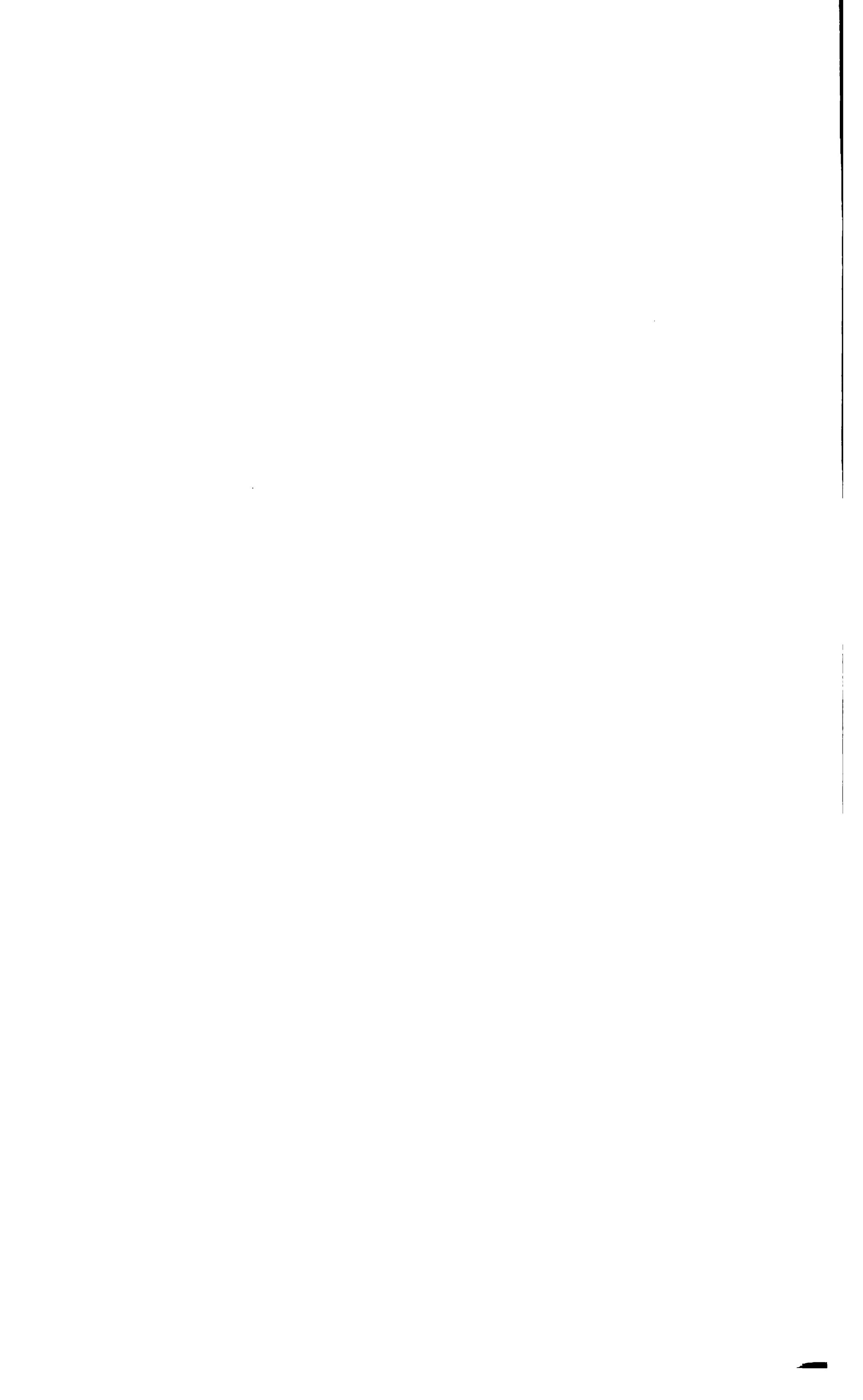
Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

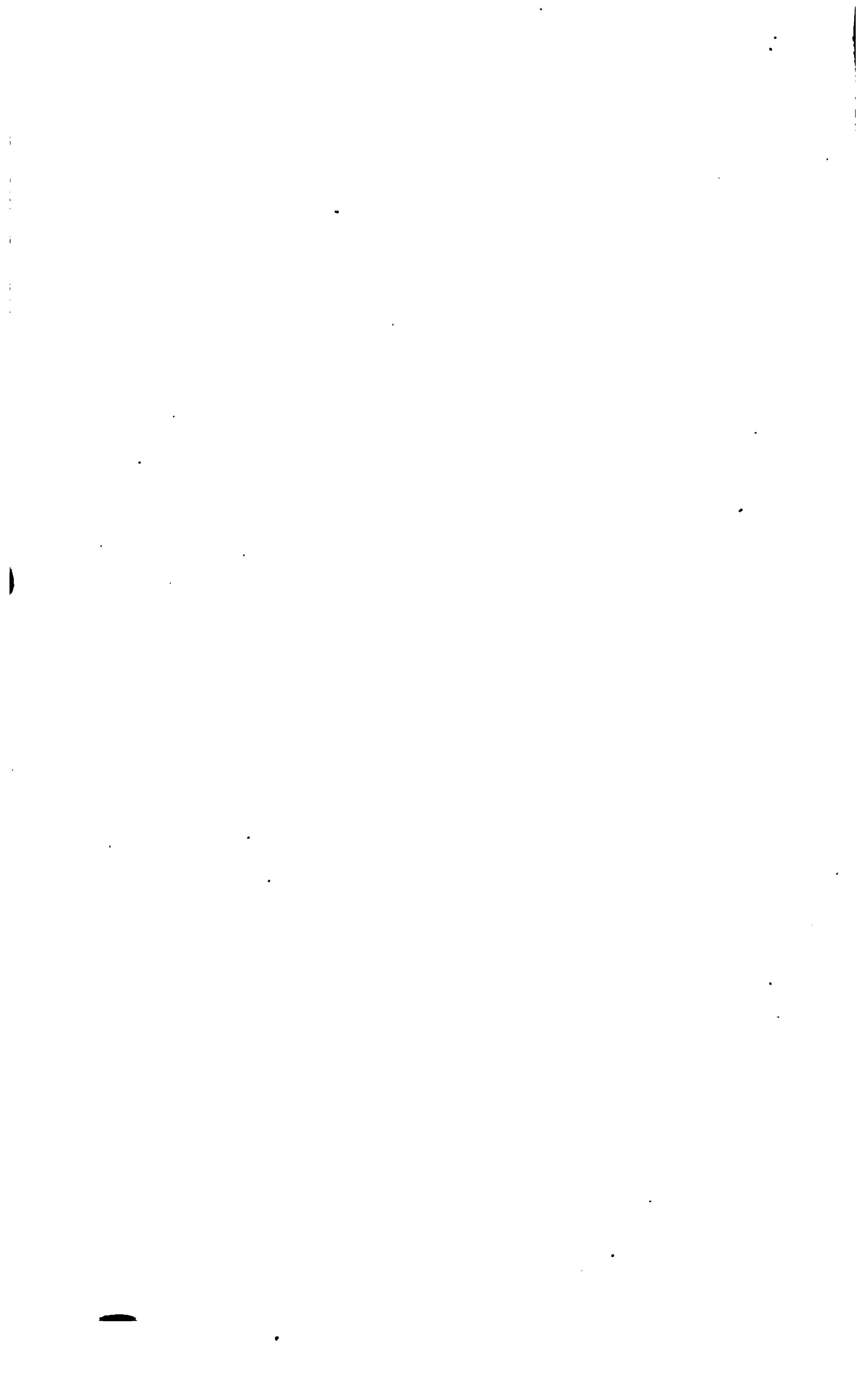


•









E.J.
A.J.E
Q.F.P.

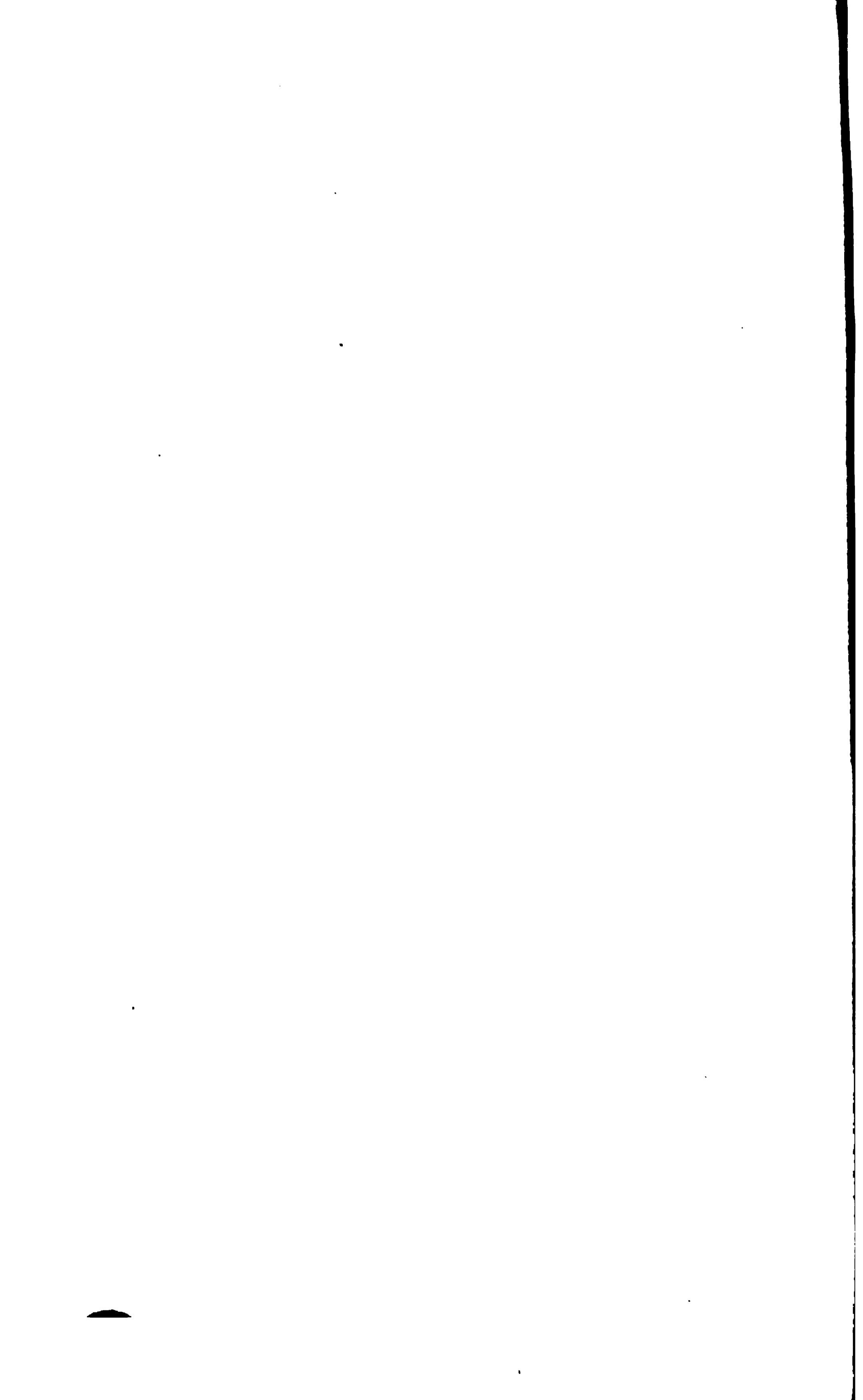


PLEADING AND PRACTICE

OF THE

HIGH COURT OF CHANCERY.

VOL. III.



PLEADING AND PRACTICE
OF THE
HIGH COURT OF CHANCERY.

BY THE LATE
EDMUND ROBERT DANIELL,
BARRISTER-AT-LAW.

Sixth American Edition,
WITH NOTES AND REFERENCES TO AMERICAN DECISIONS; AN APPENDIX OF
PRECEDENTS; AND OTHER ADDITIONS AND IMPROVEMENTS,
ADAPTING THE WORK TO THE DEMANDS OF
AMERICAN PRACTICE IN CHANCERY.

BASED ON THE SIXTH ENGLISH EDITION, AND THE FOURTH
AND FIFTH AMERICAN EDITIONS.

By J. C. PERKINS, LL.D. AND W. F. COOPER, LL.D.

BY JOHN M. GOULD, PH.D.
AUTHOR OF "THE LAW OF WATERS," JOINT AUTHOR OF "NOTES ON THE REVISED
STATUTES," EDITOR OF STORY'S "COMMENTARIES ON EQUITY
PLEADINGS," TENTH EDITION, ETC.

IN THREE VOLUMES.

VOL. III.

BOSTON:
LITTLE, BROWN, AND COMPANY.

1894.

**LIBRARY OF THE
LELAND STANFORD JUNIVERSITY.**

942691

Entered according to Act of Congress, in the year 1871, by
J. C. PERKINS,

In the Office of the Librarian of Congress, at Washington.

Entered according to Act of Congress, in the year 1879, by
LITTLE, BROWN, & CO.,
In the Office of the Librarian of Congress at Washington.

Copyright, 1894,
BY LITTLE, BROWN, & CO.

UNIVERSITY PRESS:
JOHN WILSON AND SON, CAMBRIDGE.

CONTENTS.

PART I.

BILLS AND INFORMATIONS.

CHAPTER I.

FORMS OF TITLES, ADDRESSES, COMMENCEMENTS AND CONCLUSIONS OF ORIGINAL SUITS BY INFORMATION OR BILL.

I. *Title.*

No.

1. English, 1877.

II. *Address.*

2. English. Common form, 1878.
3. Where Chancellor or person holding seals is a party, 1878.
4. Circuit Courts of the United States, 1878.
5. Massachusetts and Maine, 1878.
6. New Hampshire, 1878.
7. Vermont, 1878.
8. New Jersey, 1878.

III. *Commencements.*

9. English. General form, 1879.
10. Circuit Courts of the United States, 1879
11. New Hampshire, 1879.
12. Massachusetts, 1879.

IV. *Commencements in Special Cases.*

13. Husband and Wife, 1879.
14. Wife suing alone, 1880.
15. Wife by next friend; husband a defendant, 1880.
16. Same; husband residing abroad, 1880.
17. Wife as a *feme sole*, 1880.
18. Infants, 1880.
19. Lunatics, &c., 1880
20. Assignee of insolvent debtor, 1880.
21. A person deaf and dumb, 1880.
22. Banking corporation, 1880.
23. Railroad corporation, 1881.
24. Municipal corporation, 1881.
25. Foreign corporation, 1881.
26. Foreign Republican State, 1881.
27. Creditor, suing on behalf of himself and others, 1881.
28. Shareholders in a company, 1881.
29. In suits on behalf of the government, 1881.
30. Where there is a relator, 1882.
31. Where the case is by information and bill, 1882.
32. On behalf of a lunatic, 1882.
33. V. *The premises or stating part*, 1882.
34. VI. *The charge of confederacy*, 1882.
35. VII. *The charging part*, 1883.

- 36. *VIII. The jurisdiction clause, 1883.*
- 37. *IX. Interrogating part, 1884.*
- 38. *X. Prayer of bills for relief, answer on oath waived, injunction, &c., 1885.*
To restrain proceedings at law and for an injunction, 1885.
- 39. *For a ne exeat, 1886.*
- 40. *For an account of rents and profits of mortgaged premises, and sums received by mortgagee, 1886.*
- 41. *For the production of deeds, &c., 1887.*

XI. Conclusions.

- 43. *Prayer for subpoena, 1887.*
- 44. *for process where government is a defendant, 1887.*
- 45. *for injunction and subpoena, 1888.*
- 46. *for ne exeat, and subpoena, 1888.*

CHAPTER II.

ORIGINAL BILLS PRAYING RELIEF.

SECTION I. BILLS FOR SPECIFIC PERFORMANCE OF AGREEMENTS.

- 1. Bill by vendor against a vendee for the specific performance of a written agreement for the purchase of real estate, the title only being in dispute, 1889.
- 2. Modern English form of bill for specific performance of agreement for purchase of an estate, 1890.
- 3. Charge in a bill by a purchaser against the vendor, for the specific performance of a contract for sale of a freehold estate, part of the purchase-money remaining unproductive, 1891.
- 4. Charge in a bill by first vendee, for a specific performance of an agreement for the purchase of an estate, against a vendor, and a subsequent purchaser from him, with notice; bill also charges waste, and asks injunction to restrain it, 1892.
- 5. Bill by lessee against lessor for specific performance of a written agreement for a lease of a house, 1893.
- 6. Bill for specific performance of an agreement to convey real estate against an administrator and minor children, 1894.
- 7. Allegations and prayer in a bill for specific performance of a parol agreement, the plaintiff relying upon part performance, according to the modern English form, 1895.
- 8. Prayer in a bill by a surety to compel a specific performance of an agreement to indemnify the plaintiff, — praying also a writ of *ne exeat regno*, 1897.
- 9. A bill to enforce the specific performance of a contract to make a policy of insurance, 1897.
- 10. A comprehensive form of a bill by a person entitled to the specific performance of a contract for the sale or purchase of real or personal estate, seeking such specific performance, 1902.

SECTION II. BILL RELATING TO THE ESTATE OF A MARRIED WOMAN.

- 11. Bill to enforce payment out of a married woman's separate property, of a bond given by her for the price of land conveyed to her for her sole and separate use, 1903.

SECTION III. BILL RELATING TO DOWER.

- 12. Bill for dower, and to set aside release made thereof for fraud and imposition, 1905.

SECTION IV. BILLS RESPECTING THE FORECLOSURE OF MORTGAGES.

- 13. Bill by mortgagee against the mortgagor, for a foreclosure, 1908.
- 14. Bill by a mortgagee for a foreclosure, against the surviving mortgagor, entitled as surviving devisee to the equity of redemption, 1910.
- 15. Prayer in a bill for foreclosure and sale, 1912.
- 16. English model form of bill in foreclosure suit, as given in schedule to the orders of 7th Aug. 1852, 1912.
- 17. Bill by an equitable mortgagee, by deposit for foreclosure or sale, 1914.
- 18. Bill by executors of mortgagee, for specific performance of agreement to take a transfer; or for foreclosure or sale, 1916.
- 19. Form of bill for foreclosure prescribed in the Chancery Rules of New Hampshire, 1918.

SECTION V. BILLS RESPECTING THE REDEMPTION OF MORTGAGES.

20. Bill by the heir-at-law of the mortgagors for the redemption of freehold lands, 1918.
21. Bill to redeem, by purchaser of an equity of redemption from the assignee in insolvency of the mortgagor, alleging possession by the defendant, claiming an account of rents and profits and money received for losses under policies of insurance on the property mortgaged, in the Circuit Court of the United States, 1920.
22. Statements in a bill by an assignee of a mortgagor, against the mortgagee, who took an absolute deed of the premises, but as security for a debt; and went into possession and sold the premises to a *bona fide* purchaser without notice, 1923.
23. Bill to have goods re-delivered which have been deposited as a security for money lent, 1924.
24. Bill to redeem by heir of mortgagor alleging possession, receipt of rents and profits, commission of waste, and actual occupation of part of the premises by mortgagee, 1925.

SECTION VI. BILLS FOR ACCOUNT.

25. Bill for an account by brokers employed to purchase stocks, and for injunction against suit. Modern English form, 1927.
26. Substance of a bill by an administrator of a *cestui que trust*, for an account and payment of moneys received by the trustee for timber cut from the land held in trust, and sold by him, 1929.

SECTION VII. BILL FOR CONTRIBUTION.

27. Bill to obtain an adjustment of a general average loss, and payment by the defendants of their contributory shares, 1930.

SECTION VIII. BILLS BY CREDITORS.

28. Bill by creditor against devisees in trust and executors of testator. Modern English form, 1932.
29. Creditors' bill against a corporation and its stockholders, stating the grounds on which they are liable under the statutes of Massachusetts, 1935.
30. Bill by a creditor against a foreign debtor, being an insurance company and their agent having property in his hands within the State, to compel the application, in payment of the debt, of such property, not being of a nature to be attached at law under the statutes of Massachusetts, 1938.

SECTION IX. BILL RESPECTING THE EXCESSIVE USE OF A RIGHT.

31. Bill for an account and an injunction, where a trespass had been committed, by exceeding a limited right to enter and take stone from a quarry, such trespass being a destruction of the inheritance, 1941.

SECTION X. BILLS RELATING TO PARTNERSHIP MATTERS.

32. Bill by one partner against another in the business of carpenters and builders, for an account of partnership transactions, the defendant having entered into various speculations without the consent of the plaintiff, and charged the loss of such speculations to the firm. The defendant having also hindered the plaintiff from attending at the place of business, the plaintiff took other premises and carried on business in the partnership name. The bill also prays for an injunction to restrain the defendant from receiving the partnership moneys, and for a receiver, and also for directions as to the future management of the business, 1943.
33. Bill for a dissolution of a partnership between auctioneers, and for an injunction to restrain one of the defendants from collecting debts, 1946.
34. Prayer in a bill seeking an account of partnership dealings, receiver, and injunction. Modern English form, 1948.
35. Prayer of a bill filed after a dissolution of partnership between ironmongers, the defendants having agreed to exonerate the plaintiffs from the payment of the debts, — the plaintiffs pray that an account may be taken of the debts due from the firm, and remaining unpaid, that the defendants may be declared answerable for the amount thereof, and that the plaintiffs may be declared to have a lien for the same on the partnership stock and premises, and if necessary for a sale thereof, in satisfaction of such debts ; also, for an injunction to restrain the defendants from

CONTENTS.

- selling the partnership stock, &c., and that a covenant entered into by the plaintiffs, restraining them from carrying on the trade within forty miles, may be reformed, according to the agreement of the parties, 1949.
36. Bill by a surviving partner, against the administrator, widow, and heirs of the deceased partner, claiming certain real estate which had been purchased with partnership funds, as partnership property, 1950.

SECTION XI. RELATING TO AN AGENT.

37. Bill against an agent for mismanagement, 1957.
38. Prayer for an account, in a bill by principal against an agent, 1960.

SECTION XII. BILLS TO CANCEL OR TO RECTIFY AND REFORM AGREEMENTS, BONDS, AND OTHER INSTRUMENTS, 1961.

39. Bill by lessee to have an agreement delivered up to be cancelled, by which he gave up the remainder of his lease, contrary to his intention, he not being able to read or write; praying also to have the original lease confirmed, — also for an account and repayment of the land tax paid by the plaintiff, and for an injunction to restrain the defendant from proceeding in an action of ejectment commenced by him, 1961.
40. Prayer in a bill to set aside a lease which had been granted upon the surrender of a former lease, and for an account of earth and gravel dug up beyond the quantity allowed under the old lease; plaintiff offering to grant a lease, to continue for such term as was granted by the old lease, and to confirm any underleases granted by the defendant; praying also to have an agreement and bond delivered up, and for costs against the defendants; praying also in the alternative, that if the new lease ought not to be set aside, then the same may be rectified, and for an injunction to restrain the defendants from digging gravel, or committing waste, or granting underleases, 1964.
41. Statements in a bill to cancel a deed obtained by fraud, the property having afterwards been mortgaged to third persons without notice, 1965.
42. To annul a contract for fraud, 1966.
43. Allegations in a bill to reform a policy of insurance in conformity with a previously concluded agreement for insurance, 1966.
44. Charges and prayer in a bill to rectify settlement and remove trustees. Modern English form, 1970.
45. Bill to have a conveyance reformed, 1971.
46. Another form of bill to reform a conveyance, 1972.

SECTION XIII. BILL TO RESTRAIN THE INFRINGEMENT OF COPYRIGHTS.

47. Bill to restrain a publication of a "Life of Washington," containing — pages, of which — pages were copied from Sparks's "Life and Writings of Washington," — pages being official letters and documents, and — pages being private letters of Washington, originally published by Mr. S., 1973.

SECTION XIV. BILLS TO RESTRAIN THE INFRINGEMENTS OF PATENT RIGHTS.

48. Bill for an injunction to restrain the infringement of a patent right, setting out recoveries at law and in equity, 1976.
49. Another form of bill to restrain infringement of patent right, — title having been established in a previous suit, — account, &c., 1978.
50. English form of bill to restrain infringement of patents, and for account and damages, 1985.

SECTION XV. TO RESTRAIN THE USE OF TRADE-MARKS, &c.

51. Bill by foreign plaintiffs, manufacturers in England of "Taylor's Persian Thread," to restrain the use of their names, trade-marks, envelopes, and labels placed on thread of a different manufacture, 1987.

SECTION XVI. BY JOINT OWNER IN REFERENCE TO JOINT PROPERTY.

52. Statement in a bill to restrain a part of certain joint owners of a fund from transferring the certificates showing their right to it, 1994.

SECTION XVII. BILL BY ASSIGNEE TO PROTECT THE ESTATE OF INSOLVENT DEBTOR.

53. Bill for an injunction to restrain a citizen of Massachusetts from availing himself of an attachment of personal property in another State, in an action against an insolvent debtor, and thus preventing the same from coming to the assignee, 1995.

SECTION XVIII. BILLS BY NEXT OF KIN FOR ACCOUNT AND PAYMENT OF DISTRIBUTIVE SHARES.

54. Bill by intestate's brother and sisters against his widow and administratrix for their distributive share of his estate, and for an injunction against her and the bank, or other corporation, to restrain the sale of a sum of stocks standing in deceased's name, under a suggestion of her intention to leave the country, 1997.
55. Bill by some of the next of kin of an intestate for payment of their shares of the estate. Modern English form, 1999.
56. Bill by *feme covert* and her children for a settlement, against the assignee of her husband, of her share in personal property, derived under a will. Modern English form, 2000.

SECTION XIX BILLS OF INTERPLEADER.

57. To settle and adjust claims to money due under a bond or obligation, — offer of money, — injunction against suit. Modern English form, 2001.
58. Prayer in a bill of interpleader by an insurance company. Modern English form, 2003.
59. Affidavit of secretary of public company to be annexed to bill in interpleader suit, 2004.
60. Statements in a bill by a purchaser, against different persons claiming payment for the property purchased, 2004.
61. Prayer that the defendants may interplead, — that plaintiff may be at liberty to pay the arrears of rent into court, first deducting thereout certain sums for repairs or land tax, — that possession may be delivered to the party entitled, and an allowance made to the plaintiff for certain articles, and for an injunction to restrain proceedings in ejectment and distresses made upon the premises, 2005.
62. Amended bill of interpleader by an executor, praying injunction against suits, and offering to bring fund into court, 2006.
63. Bill by an executor, in the nature of an interpleader, to obtain instructions and advice of court, 2010.

SECTION XX. BILLS FOR PAYMENT OF LEGACIES, AND ALSO TO CARRY THE TRUSTS OF WILLS INTO EXECUTION.

64. Bill against an executor by the husband of a deceased legatee for payment of her legacy, 2012.
65. Bill on behalf of infant legatees entitled to a sum of stock standing in the names of the executors, praying to have a guardian appointed, maintenance allowed for the time past and to come, — an account taken of the dividends retained by the executors, and to have the stock transferred into the Accountant-General's name, 2013.
66. Bill by the widow of a testator against the executors and trustees, claiming a share of the profits of a special partnership, as a part of her annual income under the will, 2015.

SECTION XXI. BILLS RELATING TO TRUSTS.

67. Bill by an executor and trustee under a will, to carry the trusts thereof into execution, 2017.
68. Prayer in a bill against executors and residuary legatees, the latter having raised a question of satisfaction. Modern English form, 2020.
69. Bill to obtain reimbursement out of an estate, to the children of a testator who had by his will directed certain portions of said estate to be sold for the payment of debts and legacies, but which debts and legacies had, in whole or in part, been paid out of the income of the estate, which income had been devised to said children, 2021.
70. Bill by administrator to have certain testamentary papers declared void for want of due execution and authentication, and to obtain the property of the deceased from the person in whose custody it was left for disposition according to said testamentary papers, 2025.

SECTION XXII. BILLS FOR PARTITION.

71. Bill by co-heiresses and their husbands for a partition of freehold estates, 2027.

SECTION XXIII. BILLS FOR THE APPOINTMENT OF NEW TRUSTEES.

72. Bill to remove trustees, one refusing to act, and the other a prisoner for debt, having applied part of the trust moneys to his own use. Prayer for an account, and for an injunction to restrain them from any further interference, — also for a reference to a Master to appoint new trustees, and for a receiver, 2028
73. Bill for the appointment of a new trustee under a marriage settlement, in the room of one desirous to be discharged, there being no such power therein contained, 2030.
74. Petition for discharge as trustee, and transfer of trust property to new trustee, 2031.

SECTION XXIV. BILLS BY UNDERWRITERS IN RESPECT OF FRAUDS PRACTISED UPON THEM IN THE INSURANCE OF SHIPS.

75. Bill by underwriters for a fraud practised upon them in the representation of the voyage. Prayer for an injunction to restrain the defendants from proceeding at law, and for a commission to examine witnesses abroad, 2032.

SECTION XXV. TO RESTRAIN WASTE.

76. To restrain waste by persons having a limited interest in property, 2036.

SECTION XXVI. TO PREVENT THE CREATION OF A NUISANCE WHERE IRREPARABLE INJURY TO AN INDIVIDUAL WOULD ENSUE.

77. Bill for an injunction to prevent the obstruction of ancient windows, 2038.

SECTION XXVII. A BILL QUILA TIMET.

78. Bill by a surety to compel the debtor on a bond in which he has joined to pay the debts incurred by breach of covenant, 2040.
79. Statements, — [English].
Where a joint-stock banking company are suing, 2042.
80. In a case of a joint-stock banking company, where their public officer is made a defendant, 2042.
81. Where deeds not in plaintiff's possession, 2042.
82. Where defendant out of jurisdiction, 2042.
83. Accumulation of funds, 2042
84. Allegation in bill by assignee of debt against debtor, 2042.
85. Prayer for transferring fund from the credit of one cause to that of another, 2043.
86. Prayer for adopting proceedings had in another suit, 2043.
87. Prayer that boundaries may be ascertained, 2043.
88. For declaration of rights, 2043.
89. Respecting formal party, 2043.

CHAPTER III.**ORIGINAL BILLS NOT PRAYING RELIEF.****SECTION XXVIII. BILL TO PERPETUATE TESTIMONY.**

90. Bill to perpetuate testimony of witnesses to a will, 2044.

SECTION XXIX BILL FOR DISCOVERY.

91. Bill for discovery in aid of an action at law, the defendants having pleaded a set-off, and inserted items in the particular of such set-off which ought not to have been charged against the plaintiffs, being trustees under the deed of trust executed by two partners in trade for the benefit of their creditors, 2045.
92. Bill of discovery and prayer. Modern English form, 2045.

CHAPTER IV.

BILLS NOT ORIGINAL.

SECTION XXX. SUPPLEMENTAL BILLS.

- 93. Supplemental bill against the assignee of a bankrupt defendant, 2048.
- 94. Supplemental bill in a patent cause, stating the fact of an extension since the filing of the original bill, 2049.
- 95. Second supplemental bill in a patent cause, stating that since the filing of the first supplemental bill the patent had been surrendered, &c., and a new patent issued, 2050.
- 96. Supplemental bill, after a hearing before a single justice, and reservation for the full court, to bring forward the fact of the termination of the partnership concerning which the original bill was brought, 2052.
- 97. Supplemental bill to an original and amended bill by a lessee for the specific performance of an agreement to grant a further lease, stating that the defendant has brought an ejectment against the plaintiff, and praying an injunction against his proceeding at law, 2054.

SECTION XXXI. BILLS OF REVIVOR.

- 98. Bill of revivor (before decree) by the administrator of the plaintiff in the original suit, the executors in his will having renounced probate, 2056.
- 99. Bill of revivor on the marriage of a female plaintiff, 2057.
- 100. Bill of revivor and supplement, in a case which was considered as not falling within either of the sections 52 and 53, of 15 & 16 Vic. c. 86. Modern English form, 2058.
- 101. Bill of revivor and supplement, — another form. Modern English form, 2060.
- 102. Bill of revivor and supplement by the executors of a deceased plaintiff in the original bill against the administratrix and heiress-at-law of the deceased defendants, against whom the original bill had been exhibited for a foreclosure of a mortgage of freehold and leasehold property, 2062.

SECTION XXXII. BILLS OF REVIEW.

- 103. Bill of review for errors of law apparent on the decree itself, 2064.
- 104. Bill of review on discovery of new matter, 2065.

SECTION XXXIII. BILL IN THE NATURE OF A BILL OF REVIEW, WHERE A PARTY IS BOUND BY A DECREE.

- 105. Supplemental bill in the nature of a bill of review, 2067.

SECTION XXXIV. BILL TO SUSPEND A DECREE.

- 106. To enlarge the performance of a decree, on the ground of inevitable necessity, which prevented a party from complying with the strict terms of it, 2067.

SECTION XXXV. BILL TO SET ASIDE A DECREE OBTAINED BY FRAUD.

- 107. Bill to set aside a decree of foreclosure fraudulently obtained, and for a redemption, 2069.

SECTION XXXVI. BILL IN THE NATURE OF A BILL OF REVIVOR.

- 108. Where there has been a devise of real estate against a vendee for the specific performance of an agreement, 2071.

SECTION XXXVII. BILL TO CARRY A DECREE INTO EXECUTION.

- 109. Where a decree of partition has been obtained and not executed, 2072.

SECTION XXXVIII. CROSS BILL.

- 110. Cross bill by an administrator *de bonis non* of a deceased executor, to have a general release executed, &c., 2073.

CHAPTER V.

SECTION XXXIX. INFORMATIONS.

111. Information to restrain the making a carriage road and breaking up a public footpath, in order to prevent certain streets from being made thoroughfares for carriages, contrary to the intention of a statute, 2076.
112. Information at the relation of certain freeholders and inhabitants of a parish, forming a society called the "The Twenty-Four," by whom the affairs of the parish were managed, to establish a bequest of stock for the benefit of the poor of a certain district within the same parish, praying also to have the stock transferred into the name of ——, 2078.

CHAPTER VI.

SECTION XL. INTERROGATORIES.

113. Form of interrogatories prescribed in the General Orders of 7th August, 1852, governing the present English practice, 2081.
 114. As to a deed, 2082.
 115. As to documents, 2082.
 116. As to personal estate, 2082.
 117. Interrogatories to a bill by a purchaser against a vendor for specific performance of a contract for sale of a freehold estate, 2083.
-

PART II.

FORMS OF THE VARIOUS MODES OF DEFENCE TO SUITS IN EQUITY.

CHAPTER VII.

DEMURRERS.

1. Title and commencement, 2085.
2. Conclusion, 2085.
3. Demurrer for want of equity, 2086.
4. Form of demurrer prescribed in Chancery rules of New Hampshire, 2086.
5. Demurrer for multifariousness, 2086.
6. Demurrer on the ground of Statute of Frauds, 2087.
7. Demurrer and answer, 2087.
8. General form of demurrer, plea, and answer, 2088
9. Demurrer for want of parties, 2089.
10. Another form of demurrer for want of parties, 2089.
11. Demurrer to a bill exhibited by an infant, where no next friend is named, 2089.
12. Demurrer to a bill where a plaintiff claimed under a will, and it was apparent on the face of the bill that he had no title, 2090.
13. Demurrer to a bill of interpleader, for want of a necessary affidavit, and for want of equity, 2090.
14. Demurrer to a bill of interpleader, because it does not show any claim of right in the defendant, 2090
15. Demurrer to a bill for relief on a lost bond, for want of an affidavit of such loss being annexed to and filed with the bill, 2090.
16. Demurrer to a bill for relief against a *mandamus*, 2091.
17. Demurrer to a bill to restrain a private nuisance, the plaintiff not having established his right at law, 2091.
18. Demurrer, for want of privity, to a bill by an unsatisfied legatee against a debtor of his testator, 2091.
19. Demurrer by an arbitrator made party to a bill to impeach his award, 2091.

20. Demurrer to a bill brought against a defendant by a judgment creditor who had not sued out execution, for a discovery of goods of the debtor, alleged to have been fraudulently possessed by the defendant, 2092.
21. Demurrer where a discovery would subject the defendant to pains and penalties and forfeitures, 2092.
22. Demurrer to a bill of review and supplemental bill, on the ground that there are no errors in the decree, and that the leave of the court was not first obtained, 2092.

CHAPTER VIII.

PLEAS.

1. Title and commencement of plea, 2094.
2. Conclusion, 2094.
3. Plea to part, and answer to residue of bill, 2094.

I. PLEAS TO THE PERSON.

4. Plea that the plaintiff is an alien enemy, 2095.
5. Plea of infancy to a bill exhibited without a *prochein ami*, 2096.
6. Plea of coverture of the plaintiff, 2096.
7. Plea of lunacy, 2096.

II. THAT THE PLAINTIFF IS NOT THE PERSON HE PRETENDS TO BE, OR DOES NOT SUSTAIN THE CHARACTER HE ASSUMES.

8. Plea that the supposed intestate is living, to a bill where the plaintiff entitled himself as administrator, 2097.
9. Plea that the plaintiff is not administrator, as he alleges himself to be, of a person deceased, 2097.

III. THAT THE DEFENDANT HAS NOT AN INTEREST IN THE SUBJECT THAT CAN MAKE HIM LIABLE TO DEMANDS OF THE PLAINTIFF.

10. Plea that the defendant has no interest in the subject of the suit, 2098.

IV. THAT THE DEFENDANT IS NOT THE PERSON HE IS ALLEGED TO BE, OR DOES NOT SUSTAIN THE CHARACTER HE IS ALLEGED TO HAVE.

11. Plea that the defendant never was administrator, 2098.
12. Plea to a bill of revivor against the administrators of the original defendant, deceased, that the defendant never was appointed executor or administrator of the deceased in the State where the suit is sought to be revived against him as such, 2098.

PLEAS IN BAR.

V. THAT FOR SOME REASON, FOUNDED ON THE SUBSTANCE OF THE CASE, THE PLAINTIFF IS NOT ENTITLED TO RELIEF.

13. Plea of a decree, as of record in a court of equity, 2099.
14. Plea of a former suit depending, 2101.

VI. PLEAS IN BAR, OF MATTER IN PAIS.

15. Plea of stated account, 2101.
16. Conclusion of plea of release, 2102.
17. Plea of a will, 2103.
18. Circumstances bringing a case within the protection of a statute, viz., the Statute of Limitations or the Statute of Frauds, 2103.

VII. THAT SUPPOSING THE PLAINTIFF ENTITLED TO THE ASSISTANCE OF THE COURT TO ASSERT A RIGHT, THE DEFENDANT IS EQUALLY ENTITLED TO THE PROTECTION OF THE COURT TO DEFEND HIS POSSESSION.

19. Plea of purchase for valuable consideration, without notice, 2104.
20. A form of plea of purchase for valuable consideration, &c., prescribed by Chancery Rules of New Hampshire, 2106.

VIII. THAT THE BILL IS DEFICIENT TO ANSWER THE PURPOSES OF COMPLETE JUSTICE.

21. Plea of want of proper parties, 2106.

IX. THAT THE SITUATION OF THE DEFENDANT RENDERS IT IMPROPER FOR A COURT OF EQUITY TO COMPEL A DISCOVERY.

22. Plea that the discovery sought by the bill would betray the confidence reposed in the defendant as an attorney, 2107.

X. PLEAS TO BILLS NOT ORIGINAL.

23. Plea to a bill of revivor, 2108.
24. Plea to a supplemental bill, 2108.

CHAPTER IX.

ANSWER.

I. FORMS OF COMMENCEMENT AND CONCLUSION OF ANSWERS.

1. Commencement, 2109.
 - the title of a defence by answer to a suit in chancery, 2109.
 - by an infant, 2109.
 - by husband and wife, 2109.
 - wife separately under an order, 2109.
 - by a lunatic or idiot, &c., 2109.
 - where a bill misstates the names of the defendants, 2110.
2. Introduction or words of course, preceding an answer, 2110.
 - by a formal party who is a stranger to the facts, 2110.
 - by an infant, 2110.
3. Conclusions of answers, 2110.
 - where party claims same benefit of defence as if the bill had been demurred to for want of equity, 2110.
4. Modern form of answer in England, 2111.
5. Answer of an infant, 2112.
6. Answer of adults and infants, 2112.
7. In case of an insufficient answer, 2112.
8. Further answer to original bill and answer to amended bill, 2112.
9. Answer to original bill and bill of revivor and supplement, 2112.
10. Answer of lunatic and his committee, 2112.
11. Statement in answer by husband disclaiming any interest in legacy bequeathed to his wife, 2113.
12. Statement in answer of a *feme covert* separated from her husband, 2113.
13. Answer and disclaimer, 2113.
14. Where a defendant objects to answer particular interrogatories, 2114.
15. Statement in answer to prevent plaintiff from calling for the production of documents in defendant's possession, 2114.
16. Statement in answer by mortgagees raising the defence of the Statute of Limitations, 2115.
17. Another form of answer of the Statute of Limitations, 2116.
18. The like, 2116.
19. Statement in answer of a trustee of acquiescence on the part of the *cestui que trust* to the application of the trust fund, 2116.
20. An answer insisting on the benefit of the Statute of Frauds, as if it had been pleaded by the defendant, 2116.
21. Another form of answer claiming the benefit of the Statute of Frauds, 2117.
22. Another more extended form, 2117.
23. Form of answer prescribed by Chancery Rules in New Hampshire, 2118.

II. COMMON FORMS OF STATEMENTS AND ALLEGATIONS IN ANSWERS.

24. Accounts, reference to book containing them, 2119.
25. Accounts refused as being useless before decree, 2119.
26. Admission for purposes of the suit, 2119.
27. Claims made by defendant, 2119.
28. Craving leave for greater certainty, 2119.

29. Craving leave to refer to co-defendant's answer, 2119.
30. Information and belief, 2120.
31. Ignorance, 2120.
32. Qualified denial, 2120.
33. Reference to schedule, 2120.
34. Release craving same benefit as if pleaded, 2120.
35. Settled accounts, claim of, 2121.
36. Submission to trustees to act, 2121.
37. Traverse, 2121.
38. Trustee, desire to be discharged, 2121.
39. Vexatious suit; settled accounts; claim of benefit of defence as if raised by plea or demurrer, 2121.
40. Want of interest in plaintiff; craving same benefit as if defence by demurrer, 2122.
41. Claim of benefit of same defence to amended as to original bill, 2122.

CHAPTER X.

REPLICATION.

1. Form of general replication, 2123.
2. Recent English form, 2123.
3. Form of replication prescribed in Chancery Rules in New Hampshire, 2123.
4. Form of replication in Massachusetts, 2123, note.

CHAPTER XI.

EXCEPTIONS TO ANSWERS.

1. For insufficiency,—English form, 2124.
2. For scandal, 2124.
3. Memorandum that scandal has been expunged, 2125.

CHAPTER XII.

NOTICES OF MOTIONS.

1. For an injunction to stay proceedings at law, 2126.
2. For an injunction to stay an action brought against an executor after decree, 2126.
3. For special injunction against commission of waste or other act complained of in bill, 2127.
4. For the appointment of a receiver, 2127.
5. Notice to next of kin of application for a representative *ad litem* of a deceased person, 2127.
6. By representatives of deceased defendant to dismiss suit unless revived against them, 2127.
7. By defendant to dismiss or stay suit unless prosecuted by assignee of bankrupt, sole plaintiff, 2128.
8. Of filing answers, 2128.
9. Of having filed exceptions, 2128.
10. Of having set down exceptions, 2128.
11. To take evasive answer off the file, 2128.
12. To take affidavit off the file for scandal, &c., 2129.
13. For leave to amend an answer, 2129.
14. To discharge an order for irregularity, 2129.
15. For leave to examine witnesses, *de bene esse*, 2129.
16. Of appointment before examiner to take cross-examination of deponents in affidavits, 2130.
17. That the plaintiff's bill may stand dismissed for want of prosecution, 2130.
18. By sole plaintiff to dismiss bill filed without his authority, 2130.
19. By a co-plaintiff to strike his name out of bill filed without his authority, 2131.
20. Notice of motion for decree, 2131.
21. To settle minutes of decree, 2131.

22. Notice to pass decree, 2132.
23. To vacate enrolment of decree, 2132.
24. To suppress depositions, 2132.
25. For an issue at law, 2132.
26. To dissolve injunction, 2132.
27. For order to stay proceedings in original suit, 2132.
28. For an attachment for contempt, 2133.
29. For hearing, 2133.
30. Notice of hearing on bill and answer, 2133.

CHAPTER XIII.

PETITIONS AND MOTIONS.

1. Petition to take the answer of a defendant without oath, — English form, 2134.
2. To amend bill, 2134.
Another form of petition for amendment of bill, 2135.
3. To amend bill after answer, but not requiring further answer, 2135.
4. To amend bill after answer, requiring further answer, 2135.
5. To amend bill by adding a defendant, 2136.
6. Petition of course for leave to amend answer by consent, 2136.
7. The like, for leave to file supplemental answer by consent, 2136.
8. Of plaintiff to be admitted to sue *in forma pauperis*, 2137.
9. Of a defendant to be admitted to defend *in forma pauperis*, 2137.
10. To assign guardian *ad litem* to an infant defendant, 2138.
11. For the appointment of a guardian *ad litem* on petition of the plaintiff, 2138.
12. To be admitted to prosecute or defend, by an administrator, 2139.
13. For notice to administrator to appear and defend, 2139.
14. For leave to make new parties upon the decease of one of the original parties, 2139.
15. By husband and wife, 2140.
16. Petition of course, by party late an infant, on coming of age, to dismiss bill with costs, before decree, 2140.
17. For discharge of defendant out of custody of sheriff or messenger, 2140.
18. To withdraw a plea or demurrer, 2141.
19. That a *feme covert* may answer separate from her husband, 2141.
20. Of a plaintiff for a *habeas corpus* to bring defendant in custody of sheriff to bar of the court to answer his contempt for not appearing to or answering plaintiff's bill, 2141.
21. To use in original and cross-suits evidence taken in either of them, 2142.
22. To enlarge time to answer in cross-suit, &c., 2142.
23. To stay proceedings in original suit till after cross-bill is answered, 2142.
24. To change a solicitor, 2143.
25. To prove exhibits by affidavit at the hearing of a cause, 2143.
26. For a plaintiff to dismiss his bill with costs, 2144.
27. To enter a decree *nunc pro tunc*, 2144.
28. Special petition to rectify a decree or order, 2144.
29. To discharge dstringas on stock, 2145.
30. For a solicitor to deliver his bill of costs, and that it may be taxed, 2145.
31. For leave to withdraw replication and amend bill, 2146.
32. Petition to a Justice for a temporary injunction, 2146.
33. Petition for an injunction, 2146.
34. Petition for an injunction and receiver, pending question of insolvency, 2147.
35. Motion by defendant for allowance out of property in hands of receiver, 2148.
36. Motion to modify an injunction, with the qualified allowance of the court thereon, 2149.
37. Petition for an attachment for disobeying an injunction, 2149.
38. Another form of prayer in a petition for an attachment for breach of an injunction, 2150.
39. Writ of attachment for contempt, 2150.
40. Order for an attachment, &c., for breach of an injunction, 2151.
41. For leave to file a bill of review on the ground of the discovery of new facts, 2152.
42. Petition for leave to file an information in the nature of a *quo warranto*, and for an injunction forbidding the exercise of the right, &c., of certain offices, 2152.
43. Petition for the transfer of a fund to a person becoming entitled on the death of the tenant for life, 2154.
44. Petition of rehearing and appeal, 2155.

CHAPTER XIV.

AFFIDAVITS.

1. General form, 2157.
2. Affirmation by a Quaker or Moravian, 2157.
3. Affirmation by other persons, 2158.
4. Common affidavit to be annexed to a bill in interpleader suit, 2158.
5. Affidavit of secretary to public company to be annexed to bill in interpleader suit, 2158.
6. Affidavit of the plaintiff that he has not the deeds in his possession, to annex to a bill before it is filed, 2159.
7. Affidavit by plaintiff to accompany bill to obtain benefit of a lost instrument, 2159.
8. Affidavit to obtain order to be admitted to sue or defend a suit, *in forma pauperis*, 2159.
9. Affidavit of service of a notice of motion, 2159.
10. Affidavit of personal service of a bill, 2160.
11. Affidavit of service of an amended bill on the solicitor of the defendant, 2160.
12. Affidavit of delivery of interrogatories, 2160.
13. Affidavit to obtain order assigning guardian *ad litem* to an infant defendant, 2161.
14. Affidavit of tender of costs where defendant taken under attachment or by messenger, 2161.
15. Affidavit as to the correctness of the translation into English of a document in a foreign language, 2161.
16. Affidavit as to production of documents pursuant to a decree or order, 2162.
Another form on different state of facts, 2162.
17. Affidavit of mortgagee, or his attorney, having attended to receive mortgage money certified to be due, 2162.
18. Affidavit to obtain a *ne exeat*, 2163.
19. Another form of affidavit to obtain a *ne exeat*, 2164.
20. Affidavit to obtain writ of *distringas* on stock, 2164.
21. Affidavit of waste being committed, to ground an injunction to stay waste, 2165.
22. Affidavit identifying a person named in a certificate of his death or burial, 2165.
23. Affidavit verifying the Parish Register as to the burial of a party in a cause, and his identity, 2166.
24. Affidavit of the execution of a deed by attesting witness, 2166.
25. Affidavit of execution of deed by a person not a witness to the execution of it, 2166.
26. Affidavit of a witness being of the age of seventy years to obtain order to examine him *de bene esse*, 2167.
27. Affidavit by plaintiff or defendant to obtain an order for a commission, or for an examiner to examine witnesses abroad, 2167.
28. Affidavit in support of an application to amend bill, 2167.
29. Affidavit in support of application for leave to file voluntary answer, after the expiration of the time limited, 2168.
30. Affidavit that no answer has been delivered, so that a decree may be entered on the bill as confessed, 2168.
31. Affidavit of having discovered new matter for a bill of review, 2169.
32. Affidavit by an executor, to obtain order to restrain action after decree, 2169.
33. Affidavit verifying receiver's account, 2170.

CHAPTER XV.

JURATS.

1. To bill or answer or affidavit, 2171.
2. To the answer of a foreigner, 2171.
3. The affidavit of interpreter to be annexed to answer, 2171.
4. To the answer of a corporation, 2172.
5. Where answer or affidavit sworn by English form at Record and Writ Clerks' Office, 2172.
6. If before a London commissioner, 2172.
7. Or if in the country, 2172.
8. Ordinary form of oath and jurat, one defendant or deponent, 2172.
9. The like, two or more defendants or deponents sworn together, 2173.
10. Where the guardian of an infant swears to the answer, 2173.
11. Where the defendant or deponent cannot write, 2173.

12. Oaths and jurat, where a witness reads the answer or affidavit to a marksman, 2173.
13. Oath of a blind defendant or deponent and jurat, where the officer reads to him the answer or affidavit, 2174.
14. Oaths and jurat where a witness reads the answer, &c., to a blind defendant or deponent, 2174.
15. Ordinary form of oath by a deaf and dumb defendant, &c., 2175.
16. Where a married woman answers separately from her husband, 2175.
17. Oaths and jurat, where a foreigner answers or deposes in English through an interpreter, 2175.
18. Oaths and jurat, where the answer, &c., is in a foreign language, &c., 2175.
19. Verification of a translation of the answer into English, &c., 2176.
20. Jurat to answer or affidavit of a Hindoo, &c., 2176.

CHAPTER XIV.

SUMMONSES.

1. Summons for leave to amend bill, 2177.
 2. Summons for further time to answer, 2177.
 3. Summons for leave to put in voluntary answer, 2177.
 4. Summons by plaintiff for further time to answer interrogatories, filed by the defendant, 2177.
 5. Summons for leave to file exceptions to answer, 2178.
 6. Summons to attend a hearing on reference to a Master, 2178.
 7. Summons for affidavit and production of documents, 2178.
 8. Summons for production of documents admitted by answer, 2179.
 9. Summons to proceed with accounts, &c., directed by decree or order, 2179.
 10. Summons for order for accounting party to leave accounts, 2179.
 11. Summons for order for leave to attend proceedings, 2179.
 12. Summons to discharge receiver, and vacate recognizance, 2179.
 13. Summons to substitute next friend, 2180.
 14. Summons to proceed with receiver's accounts, 2180.
-

PART III.

CHAPTER XVII.

1. FORM OF INTRODUCTORY PART OF ORIGINAL DECREE AT THE HEARING OF THE CAUSE.
 - (a) English form, 2181.
 - (b) Circuit Court of the United States, 2182.
 - (c) If standing for judgment, 2182.
 - (d) Where defendant who has not entered an appearance, or a person not on the record appears at the hearing, and submits to be bound, 2182.
2. DECREE ON MOTION FOR DECREE.
 - (a) Date and title, 2183.
 - (b) If standing for judgment, 2183.
 - (c) Decree on interlocutory motion treated as motion for decree, 2183.
3. DECLARATORY DECREE ON SPECIAL CASE.
 - (a) Date and title, 2183.
 - (b) If special case stands for judgment, 2183.
 - (c) Declaratory decree on special case; Court declining to answer one of the questions, 2183.
4. ORDER ON SPECIAL PETITION.
 - (a) Date and title, 2184.
 - (b) Order on petition as to part adjourned, 2184.

5. ORDER ON SPECIAL MOTION.

- (a) Date and title, 2184.
- (b) The like, — on cross-motion, 2184.

6. INTRODUCTORY PART OF ORDER ON CAUSE COMING ON FOR FURTHER CONSIDERATION, 2185.

7. USUAL DIRECTIONS.

- (a) Directions for reference to a Master, 2185.
- (b) Where account directed, 2185.
- (c) General adjournment to chambers, 2185.
- (d) Particular reference, — accounts and inquiries, 2185.
- (e) Liberty to state special circumstances, 2186.
- (f) Separate report, 2186.
- (g) Directions to settle conveyances, &c., in case parties differ, 2186.
- (h) Further directions, 2186.
- (i) Reservation of interest, 2186.
- (j) Reservation of costs, 2186.
- (k) Direction for taxation and payment of costs, &c., 2186.
- (l) Further consideration adjourned, — liberty to apply, 2186
- (m) The like with liberty to apply in chambers as to particular matter, 2186.
- (n) If costs are partly dealt with by decree, 2187.
- (o) Payment of money by one party to another, 2187.
- (p) Payment of interest to life-tenant or his representatives, 2187.
- (q) To trustees, 2187.
- (r) To corporation aggregate, 2187.
- (s) Or to the treasurer, 2187.
- (t) To married woman for her separate use, 2187.
- (u) To husband in right of his wife, 2187.

8. TAXATION AND PAYMENT OF COSTS BETWEEN PARTIES.

- (a) Taxation and payment of costs by one party to another, 2188.
- (b) Plaintiff to pay one defendant's costs, and recover them with his own from a co-defendant, 2188.
- (c) Costs of application to be costs in the cause, 2188.
- (d) Petition dismissed with costs, 2188.
- (e) Tax and pay costs without prejudice, how ultimately to be borne, — costs made charge, 2188.
- (f) No costs given on either side, 2188.
- (g) The like, as to part, 2189.
- (h) Taxation of plaintiff's and defendant's respective costs of parts of suit, involving apportionment of general charges, with set-off, 2189.
- (i) Direction to like effect, 2189.
- (j) Taxation of defendant's costs of suit with set-off of part, caused by defendant's wrongful claim, including costs of co-defendants; husband and wife on bill to redeem, 2189.
- (k) Taxation of costs, except so far as increased by particular claim, not involving apportionment of general charges, 2190.
- (l) Costs up to a particular time, 2190
- (m) Costs to be paid by plaintiff and defendant respectively from and to a particular time, — set-off, 2190.
- (n) Costs of suit taxed and set off against sum due, 2190.
- (o) The Master to look into petition and affidavits, and if of improper length, to distinguish and set off costs, 2191.

9. TAXATION OF COSTS AND PAYMENT OUT OF FUNDS IN COURT.

- (a) Taxation of costs and payment to solicitors, 2191.
- (b) Taxation of costs of application; payment out of cash, 2192.

10. DECREES BY CONSENT, 2192.

11. DECREE APPROVING AND CONFIRMING CERTAIN ACTS DONE AND MATTERS AGREED UPON BY THE PARTIES, 2192.

12. RESERVING CASE FOR FULL COURT (MASS.), 2192.

13. APPEAL (MASS.), 2192.

CHAPTER XVIII.

GENERAL SUBJECTS OF EQUITY.

1. ACCOUNT.
 - (a) General account, — original decree, — injunction continued, — judgment to stand as security, 2193.
 - (b) Direction for allowing stated account, 2193.
 - (c) On bill by part owner of a ship, for an account, 2193.
 - (d) Decree setting aside stated accounts, and for general account, 2194.
 - (e) Direction for leave to surcharge and falsify, 2194.
 - (f) Accounts to be conclusive, with leave to show errors, 2194.
 - (g) Release to stand as to sums received, and account stated, with leave to surcharge and falsify, 2194.
 - (h) Reference to take accounts of funds in hands of an agent of a foreign principal, said principal being the defendant, and the funds being claimed in equity because they could not be come at to be attached, &c. Agent claims lien for his costs, &c., 2195.
 - (i) Order of reference to Master; account; rests; state special circumstances, &c., 2195.
 - (j) The like, with order to report facts, — objections to draft of report to be deemed waived, unless made in a specified time, 2196.

2. ESTABLISHING WILL.
 - (a) Where will proved, 2197.
 - (b) Where admitted, 2197.

3. DEVISE AND APPOINTMENT.
 - (a) Devise declared good, 2197.
 - (b) Declaration that real estate is charged with debts, 2197.
 - (c) Declaration that a devise on a double contingency failed, 2197.
 - (d) Appointments by deed and will held valid, 2198.
 - (e) Forfeiture declared, 2198.

4. DOMICILE AND LEX LOCI.

Inquiry as to persons entitled under a gift to heirs, by the law of France, 2198.

5. DIRECTIONS TO EXECUTOR TO PAY MORTGAGE OUT OF GENERAL ASSETS, COSTS, 2199..

6. CONSTRUCTION OF WILL; DIRECTIONS TO EXECUTE, 2199.

7. DECREE SETTLING THE BASIS AND AMOUNT OF THE PRINCIPAL RESIDUARY FUND OF AN ESTATE; FIXING THE TIME WHEN THE INCOME OF THOSE ENTITLED SHALL BEGIN TO ACCRUE; COSTS AND CHARGES FOR AN AMOUNT AGREED, OUT OF THE PRINCIPAL FUND, 2200.

8. DECREE DECLARING THE RIGHTS OF PARTIES UNDER A WILL AND ORDER OF REFERENCE; FURTHER CONSIDERATION RESERVED UNTIL, &c., 2202.

9. DECREE DIRECTING AN ADMINISTRATOR DE BONIS NON HOW TO APPROPRIATE THE RESIDUE OF AN ESTATE IN PAYMENT OF LEGACIES, 2203.

10. DECREE SUPPLEMENTAL TO THE ABOVE, AS TO COSTS, 2204.

11. DECREE DECLARING VOID CERTAIN TESTAMENTARY PAPERS, NOT BEING EXECUTED ACCORDING TO THE LAW OF THE TESTATOR'S DOMICILE AT HIS DECEASE; ORDERING THE PERSON HOLDING PROPERTY OF DECEASED FOR DISPOSITION ACCORDING TO SAID TESTAMENTARY PAPERS TO PAY OVER TO THE ADMINISTRATOR OF DECEASED, 2204.

12. EXECUTION OF POWER MADE GOOD.
 - (a) Defect of execution by appointment by will supplied, 2205.
 - (b) Inquiry as to exercise of power to appoint, 2205.

13. CHARITABLE GIFTS. ORIGINAL DECREE.

- (a) Will established, except as to legacies, partly failing, 2206.
- (b) Will established, except as to charity devise, 2206.
- (c) Gifts by deed and will in charity declared void, 2206.
- (d) Inquiries as to charities and their treasurers, 2206.
- (e) Inquiries as to charities and lands in *mortmain*, 2206.

14. ADMINISTERING CHARITY. ORIGINAL DECREE.

- (a) Decree for scheme for regulating charity; new trustees; inquiry as to value, income, and letting property; rents, 2207.
- (b) Directions for scheme for regulating charity, 2207.
- (c) Another form, 2207.

15. ADMINISTERING CHARITY. FURTHER ORDER.

- (a) Order adopting new scheme filed, 2208.
- (b) The like. Another form, 2208.
- (c) The like. Another form, 2208.
- (d) Reference to Master to report scheme, and decree thereupon, 2209.
- (e) Extract from scheme constituting a charity as to appointment of trustees, &c., 2211.
- (f) Apportionment of costs, 2212.
- (g) Regulator's extra cost of suit out of charity funds, 2212.
- (h) Order to tax costs of Attorney-General separately from relators; on petition, 2212.

16. MORTGAGES. FORECLOSURE.

- (a) Foreclosure at hearing; mortgagor in possession, 2213.
- (b) Foreclosure; mortgagee in possession; costs, repairs, improvements, rents, and profits, reconveyance, default, infant, 2213.
- (c) Direction to ascertain damages, 2214.
- (d) Sale, in default of payment, 2215.
- (e) Final foreclosure, 2215.

17. EQUITABLE MORTGAGES.

- (a) Decree for specific performance of agreement to execute a mortgage, 2216.
- (b) Decree for absolute conveyance, free from all equity of redemption, 2216.
- (c) Like decree, with receiver, 2216.
- (d) Sale; mortgage by deposit, 2217.

18. LIENS.

- (a) Lien on reversion; conveyance, 2217.
- (b) Lien on costs in another suit declared, 2218.
- (c) Decree, declaring a lien or charge upon an estate for the increased value by improvements made by a *bona fide* purchaser, for a valuable consideration, without notice of any defects in the title, 2218.
Report of Master, 2219.
Final decree, 2219.
- (d) Decree that subsequent assignees pay to former assignees of an insolvent debtor taxes on real estate held by the latter under the assignment, and assessed to same while acting as such assignees, and paid by them after they had ceased to be assignees, on appeal from decree of commissioner of insolvency disallowing their claim, 2220.

19. DECREE FOR DELIVERING POSSESSION OF MORTGAGED PROPERTY TO MORTGAGEES, 2220.

20. MORTGAGES. REDEMPTION.

- (a) Decree for redemption and account against mortgagee in possession, 2221.
- (b) Another form by agreement, 2222.
- (c) Occupation rent, 2223.
- (d) Repairs and lasting improvements, 2223.
- (e) Rests, 2223.
- (f) Deterioration, 2223.
- (g) Strip and waste, 2223.
- (h) Inquiry as to brick-making on the premises, 2224.
- (i) Account of insurance premiums, 2224.

- (j) Common form of decree for reference on a bill to redeem against mortgagee in possession, 2224.
- (k) Another form for the same, 2224.
- (l) Another form for the same, 2225.
- (m) Dismissal of bill for redemption, on plaintiff's failure to pay amount found due on the mortgage, 2225.
- (n) Decree for surrender of mortgaged premises on payment of amount found due on the mortgage; in default of payment bill dismissed and redemption barred, 2226.
- (o) Decree, — among other things, declaring an instrument in writing a mortgage, &c., 2226.
- (p) Decree for redemption where an absolute deed was shown to be a mortgage by parol evidence, 2227.
- (q) Decree declaring an absolute deed to be a mortgage, given to secure a debt, absolute sale by the mortgagee, without notice, destroying the equity of redemption, a constructive fraud; defendant (mortgagee) to pay to the mortgagor the value of the land and of the rents and profits, after deducting the principal and interest of the debt for which the deed was made, 2227.
- (r) Outlines of a decree declaring plaintiffs entitled to redeem against purchaser with notice of plaintiff's right, and a reference in regard to the amount due on the mortgages, the rents and profits, the improvements and waste, 2228.
- (s) Another form of declaration that parties are not *bona fide* purchasers, without notice, 2229.
- (t) Redemption after tender; payment into court; costs; costs, charges, and expenses, 2229.
- (u) Chattels. Redemption of goods pledged; overpayment; assignee, 2230.
- (v) Report of Master on bill for redemption, 2231.
- (w) Objections to draft of Master's report, 2234.

21. PARTNERSHIP.

- (a) Decree enforcing partnership agreement with variations, 2235
- (b) Setting aside partnership induced by misrepresentation; consequent relief, 2236.
- (c) Partnership still existing; sale as a going concern, 2237.
- (d) Inquiry as to existence of partnership, 2237.
- (e) Decree for account of dealings and transactions, 2237.
- (f) House, &c., where business carried on declared partnership assets; sale and accounts; receiver, 2237.
- (g) Decree for dissolution from time of notice; renewed lease; partnership assets; inquiry as to most beneficial mode of sale, and if as a going concern, or as wound up; sale, 2238.
- (h) Account of partnership assets on bill by creditor; one partner deceased, survivors bankrupt; inquiry, if deceased's estate was released, 2239.
- (i) Same; against administrators of deceased partner and surviving partner, 2239.
- (j) Accounts and inquiries as to testator's partnership business, 2241..
Decree requiring surviving partner, who has retained the capital stock of the firm and employed it in trade, to account for the profits derived from it, proper allowances being made for managing the business, 2242.
- (k) Decree declaring real estate partnership funds; directing sale; account and distribution, 2243.
Confirmation of Master's report, 2245.
Final decree, 2245
- (l) Partnership realty to be deemed personalty, 2246.
- (m) Inquiry whether dissolution beneficial for infants, 2246.
- (n) Infants declared entitled to profits against survivor, also executor; inquiry, if for their benefit to take profits or interest, 2247.

22. ACCOUNTS AS TO SHIPS

- (a) Decree for account of ship and cargo Inquiries as to sale between part owners, 2247.
- (b) Decree for general account as to ship, 2248
- (c) Accounts of shares and earnings, and proceeds, if sold, 2248.
- (d) Decree for account of freight and earnings, 2248.

23. SURETYSHIP.

- (a) Contribution between co-sureties and principal, in suit by surety, 2249.
- (b) Account of payments by plaintiff as surety, and inquiry whether some of the co-sureties can contribute, 2249.

- (c) One co-surety unable to pay his full share; costs of resisting contribution, 2250.
- (d) Indemnity between co-defendants, in suit by creditor, 2251.
- (e) Contributions to general average loss, 2251.
- (f) Interlocutory decree, declaring purchase of real estate on joint account of plaintiff and defendant, and not on sole account of defendant; right to redeem; bona fide purchaser without notice; plaintiff entitled to one-half the money received by defendant on sale of part of the estate; reference to Master to take an account, 2252.

24. PARTITION AT THE HEARING.

- (a) Decree for partition and commission to issue, 2254.

25. SPECIFIC PERFORMANCE.

- (a) Reference of title. Inquiry as to title at the hearing, 2254.
- (b) Declaration of right on bill by vendor, and inquiry, 2255.
- (c) Same; where title accepted subject to requisitions, and subject to compensation, 2255.
- (d) Decree for specific performance, on bill by vendor to enforce contract for sale, 2255.
- (e) Where title accepted at the hearing, 2256.
- (f) On bill by purchaser, 2256.
- (g) Purchaser having waived title; indemnity against mortgage, 2256.
- (h) Declaration as to waiver of title, 2257.
- (i) Voluntary settlement set aside in favor of purchaser, 2257.
- (j) Compensation or abatement. Inquiry, if part, to which title not shown material, 2257.
- (k) Similar inquiry, without prejudice, 2257.
- (l) Abatement for delay, 2258.
- (m) Abatement for deficiency, 2258.
another form, 2258.
- (n) Decree for lease, on bill by intended lessee, 2259.
- (o) Decree with inquiry, if leases tendered for execution are proper, 2259.
- (p) Lease antedated to enable action on covenants; defendant to admit execution or date, 2260.
- (q) Direction for lease to contain particular covenant, 2260.
- (r) Specific performance of an agreement for a family compromise, 2260.
- (s) Specific performance, and reference of title, 2261.
- (t) For specific performance on breach of a bond to reconvey land on certain conditions, after verdict finding a neglect to perform, 2261.
- (u) Interlocutory decree; specific performance; family compromise; real estate and stocks, 2262.
Final decree, 2264.
- (v) Specific performance of agreement for policy of insurance, 2264.
- (w) Specific performance in case of sale of good-will of a business with inquiry as to subsequent dealings with stock in trade, 2265.
- (x) Against specific performance; causes stated, 2266.

CHAPTER XIX.

SPECIFIC RELIEF.

1. LOST INSTRUMENTS. FURTHER ORDER.

- (a) In case of lost mortgage deeds, 2267.
- (b) Like decree; with injunction, 2267.
- (c) Indemnity against lost bill of exchange, 2268.

2. FRAUDULENT DEALINGS.

- (a) Release set aside for fraud, and not pleadable at law, 2268.
- (b) Purchase completed through fraud and misrepresentation set aside, 2268.
- (c) Transfer of scrip shares set aside for fraud, 2269.
- (d) Plaintiff declared not bound by mortgage and judgment obtained from him by fraud by his solicitor, who received and misapplied the money, 2270.
- (e) Settlement by lunatic, since so found, set aside, 2270.
- (f) Conveyance in contemplation of insolvency set aside as fraudulent, 2270.

- (g) Decree declaring a party estopped from asserting a legal title after acquiescence in the purchase of the premises by a *bona fide* purchaser from a third party, 2271.
 - (h) On a bill to rescind a contract for the purchase and sale of timber lands, on account of material misrepresentations; to obtain repayment of the money advanced, and to have the notes given for the balance discharged and cancelled, or compensation made and the plaintiff indemnified, 2272.
 - (i) Decree declaring a levy void, enjoining not to set up any title under it, and ordering a release, 2273.
 - (j) Decree declaring void the levy of an execution in favor of a judgment creditor of an insolvent debtor upon the debtor's reversion of real estate after the first publication of notice of issuing the warrant, 2274.
 - (k) Setting aside a fraudulent conveyance, charging the real estate with a judgment debt, although not directly liable to an execution, and not permitting the conveyance to stand as security for advances made on account of it to the grantor, with the meditated intent to defraud, 2274.
 - (l) Assignment made with intent to defeat heir, of a judgment declared void. Sale ordered of the estate still in the hands of assignees; they to unite in the conveyance. If proceeds insufficient to satisfy judgment, &c., assignees to be charged with value of the estate sold by them; just allowance of expenditures, &c., prior to judgment. Reference to Master, &c., 2277.
 - (m) Decree in favor of heirs, declaring void a deed obtained of their ancestor by imposition, he being weak in mind and body, except as to actual advances and charges, for which allowed to stand as security, 2278.
 - (n) Decree setting aside a sale of a testator's share in a partnership concern, &c., by his executors, to his partners, for the purpose of being resold to one of his executors, and ordering an account of the subsequent profits, as if the partnership had continued, in favor of the estate, 2279.
 - (o) Decree declaring void a direction, in a devise of an estate for charitable purposes, that the rents should not be raised, and declaring that there was no resulting trust for the heir-at-law as to the increased rents, &c., 2280.
 - (p) Substance of decree setting aside a discharge of a mortgage, entered by mistake in the margin of the record thereof in the registry of deeds, 2280.
3. DECREE FOR SALE AND REIMBURSEMENT TO CHILDREN OUT OF THE PROCEEDS OF AN ESTATE, THE INCOME OF THE RESIDUE OF WHICH, AFTER PAYMENT OF DEBTS AND LEGACIES, HAD BEEN GIVEN TO THEM BY THE WILL OF THE TESTATOR, BUT WHICH INCOME, WITH THEIR CONSENT, HAD BEEN TAKEN TO PAY OFF THE SAID DEBTS AND LEGACIES, WHICH WERE DIRECTED BY THE TESTATOR TO BE PAID BY THE SALE OF CERTAIN OF HIS REAL ESTATE, 2281.
4. DECREE DECLARING THE VALIDITY OF A DEED TO TRANSFER THE ESTATE NAMED IN IT, AND ORDERING THAT THE GRANTEES BE LET INTO POSSESSION OF THE PREMISES, AND THAT THEY BE ALLOWED TO HAVE AND ENJOY THE RENTS, PROFITS, AND INCOME THEREOF, 2282.
5. DECREE ANNULLING PROCEEDINGS UNDER ONE PETITION IN INSOLVENCY, AND DIRECTING A WARRANT TO BE ISSUED ON ANOTHER, 2283.

CHAPTER XX.

PARTICULAR PERSONS.

1 FEMES COVERT.

- (a) Sale of stock and payment to wife's separate use, 2285.
- (b) Payment to divorced woman, 2285.
- (c) Inquiry, whether any settlement, and if proper, and if not, direction for settlement, 2285.
- (d) Share settled by order, without deed — husband bankrupt, 2285.
- (e) Decree ordering a trustee under a marriage settlement, of a married woman, who was insane, and whose husband was her guardian, to contribute from the trust property secured to her sole and separate use towards the expense of her support, on bill by the husband, 2286.
- (f) Assignment of dower; commissioners; inquiries, 2287.
second decree in same, 2288.
- (g) Alimony on a decree of divorce from bed and board; other directions, custody of a child, 2289.
- (h) Minutes of a decree charging the separate estate of a married woman with the payment of her debt, &c., 2289.

2. INFANTS.

- (a) Showing cause against decree ; decree *nisi* against infant, 2290.
- (b) Another form, 2290.
- (c) Decree absolute against infant, 2290.
- (d) Decree for absolute foreclosure against infant and *feme covert*, plaintiff paying their costs, and court decreeing it for their benefit, 2290.
- (e) Infants declared not bound by decree ; accounts ; former accounts to be adopted, if beneficial, 2291.
- (f) Inquiries as to advances, and maintenance, and shares, 2291.
- (g) Guardian of person, and maintenance, 2292.
- (h) Order for increase of maintenance, 2292.
- (i) Devise of maintenance of lunatic out of profits insufficient ; sale ordered, 2292.
- (j) Custody of infants committed to mother ; guardians ; provision ; father excluded, except at stated time, 2293.
- (k) Order for *habeas* on motion, 2293.
- (l) Leave to take infant out of jurisdiction. Residence abroad, 2293.

3. EXECUTORS AND TRUSTEES.

- (a) Accounts, against executors of sole executor, 2294.
- (b) Breach of trust. Investment declared improper, 2295.
- (c) Improper investment made good by instalments, without prejudice to appeal ; security to be realized, 2295.
- (d) Debentures fraudulently disposed of by trustee, without concurrence of co-trustee, to be deposited in court by alleged purchaser ; account of interest, 2295.
- (e) Inquiry as to wilful default ; bankrupt or insolvent trustee, 2296.
- (f) Further order for leave to prove balance, 2296.
- (g) Account and inquiry as to the trust funds under two settlements, 2296.
- (h) Inquiry, if executors have recovered moneys, 2297.
- (i) Inquiry as to employment of balances ; charging with interest, 2297.
- (j) Directions for annual rests and compound interest, 2298. .
- (k) Costs, charges, and expenses, beyond costs of suit, 2298.
- (l) Same, to be raised by trustees, 2299.
- (m) Inquiry as to costs, charges, and expenses, 2299.
- (n) Decree for costs in a suit by trustee to obtain instructions ; as between solicitor and client ; charging it on different funds, 2299.
- (o) Decrees to appoint new trustees, 2300.
- (p) Decree declaring construction of will, &c., 2301.

4. SOLICITORS.

- (a) Order *nisi* to strike solicitor off the roll for misconduct, 2302.
- (b) Order absolute ; cause not shown, or disallowed, 2302.

CHAPTER XXI.

SUMMARY AND ANCILLARY RELIEF.

SECTION I. INJUNCTIONS.

1. FORM OF ORDER.

- (a) Injunction on notice, or *ex parte*, on undertaking as to damage, 2303.
- (b) *Ex parte* interim order, 2303.
- (c) *Ex parte* injunction, 2303.
- (d) Another form, provisional, 2304.
- (e) Inquiry as to damages, to be paid according to undertaking, 2304.

2. STAYING PROCEEDINGS IN OTHER COURTS.

- (a) Staying present and future action, 2304.
- (b) Substance of final decree ; injunction perpetual, 2305.
- (c) Leave to proceed with action, by execution stayed, 2305.
- (d) To stay sale and withdraw, where execution issued after notice of decree, 2305.

3. WASTE, TRESPASS, AND NUISANCE.

- (a) Injunction to stay felling ornamental timber, and other waste, 2305.
- (b) The like ; and trees to intercept view ; and other waste, 2306.
- (c) The like ; and trees to shade or shelter, 2306.

- (d) Injunction and inquiry as to timber cut by life tenant, sans waste, except, &c., 2306.
- (e) Staying waste by tenants in common, 2307.
- (f) Staying pollution of a stream; nuisance, 2307.
- (g) Another form, 2307.
- (h) Decree establishing right to oyster fishing and quieting in possession with perpetual injunction, 2308.
- (i) Staying, diverting, or restraining flow of water, 2308.
- (j) Decree for abating and reducing a mill-dam which caused the water to flow back on mills above; but so framed as to conclude neither party as to the right to raise flash-boards in the dam in certain states of the river, injunction not again to raise dam so reduced, 2309.
- (k) Interlocutory decree ordering reference for inquiry, 2310.
- (l) Another decree in like case, 2311.

4 DECREE TO RESTRAIN THE USE OF REAL ESTATE IN VIOLATION OF AN AGREEMENT RESPECTING ITS OCCUPATION, 2312.

5. COPYRIGHTS.

- (a) Staying publishing a newspaper, 2313.
- (b) Staying partial infringement, 2313.
- (c) Perpetual injunction upon printing, publishing, &c., 2313.
- (d) Inquiry as to infringement, 2314.

6. PATENTS.

- (a) Staying infringing patent as to bricks, 2314.
- (b) Staying infringement as to machinery, 2315.
- (c) Motion to stand over, with leave to bring action and direction for inspection; defendant keeping an account, 2315.
- (d) Staying infringement, after verdict establishing patent, 2316.
- (e) Declaration of validity of patent; infringement; account; perpetual injunction, 2316.

7. TRADE-MARKS.

- (a) Staying using trade-marks as to tools and cutlery, 2317.
- (b) Perpetual injunction on the use of another's trade-marks, 2318.
- (c) Perpetual injunction against shipping goods with plaintiff's trade-marks, on motion for decree, 2318.

8. PARTNERSHIP.

- (a) Order for injunction against acting as partner, 2319.
- (b) Injunction on dissolution of partnership, 2319.

9. NEGOTIATING SECURITIES, 2319.

10. TRANSFERS, 2320.

11. RAILWAYS.

- (a) Railway company enjoined from continuing in possession or entering on land, 2320.
- (b) Declaration of right to use railway; rents, damages; compensation for occupying land not authorized to be taken; injunction, 2320.
- (c) Decree declaring the exclusive rights of a railroad corporation under its charter, and enjoining competing lines, 2321.

12. MANDATORY.

Enjoining the return of documents, 2323.

13. GENERAL.

Restraining a town and its officers from paying out money for unauthorized purposes, 2323.

14. WRIT OF INJUNCTION RESTRAINING ONE HOLDING PROPERTY OF A FOREIGN DEBTOR WHICH COULD NOT BE ATTACHED AT LAW FROM TRANSFERRING OR DISPOSING OF IT, 2324.

15. DISSOLVING OR CONTINUING INJUNCTION.

- (a) Injunction dissolved or continued on motion, 2325.
- (b) Continued at the hearing, 2325.

16. PERPETUAL AT THE HEARING.

Decree making injunction perpetual as to copyright, 2325.

17. BREACH OF INJUNCTION.

- (a) Committal for breach of injunction, 2325.
- (b) Committal to secure appearance to answer for breach of injunction, 2326.
- (c) Final decree after a hearing in regard to damages, costs, and fine to be imposed for a breach of an injunction, &c., 2326.
- (d) Sequestration, 2327.

18. NE EXEAT REGNO.

- (a) Order for writ to issue, 2328.
- (b) General form of the writ, 2328.
- (c) Writ discharged on defendant giving security, 2329.
- (d) Order for examination of defendant, as of poor debtor, 2329.
- (e) Notice of motion for the discharge of the writ, 2329.
- (f) *Ne exeat* discharged ; inquiry as to damages and payment according to undertaking, 2330.

SECTION II. INTERPLEADER.

1. STAYING PROCEEDINGS.

- (a) Injunction on motion upon payment into court, 2330.
- (b) Same ; on undertaking as to the subject-matter, 2331.
- (c) Interpleader in favor of bank ; United States Circuit Court cannot enjoin suit in State court ; injunction on action in United States court, unless adverse parties elect to interplead ; in case of such election funds due paid into court, 2331.

2. DECREE IN INTERPLEADER SUIT.

- (a) Direction to interplead ; payment of costs, 2332.
- (b) Action stayed as to policy money ; inquiry who entitled, 2332.
- (c) Interpleader declaring the persons entitled ; costs to be taxed as between solicitor and client, and paid out of fund ; balance to be paid over to persons entitled ; bill dismissed without costs as to other defendants, 2333.

SECTION III.

1. ISSUES.

- (a) Order for an issue, 2334.
- (b) Same, 2335.
- (c) Same, 2335.
- (d) Same, 2336.
- (e) Issue *devisavit vel non*. Modern English form, 2336.
- (f) Issues as to clause in will, 2336.
- (g) As to validity of bond, 2336.
- (h) As to sanity, and validity of deed ; fraud, 2337.
- (i) Issue as to damages, 2337.
- (j) Issue as to rights of way, 2337.
- (k) Directions after issue awarded, 2337.
- (l) Form of verdict indorsed on record (English), 2337.
- (m) Another form (Massachusetts), 2338.

2. ORDER FOR NEW TRIAL.

- (a) Modern form (English), 2338.

3. ORDER ON EQUITY RESERVED AFTER TRIAL OF ISSUE, 2338.

4. VARIOUS ORDERS ON THE EQUITY RESERVED, 2338.

- (a) After issue as to will in administration suit ; costs, 2338.
- (b) After issue as to clause in will, 2339.

SECTION IV. RECEIVERS.

1. APPOINTMENT OF RECEIVERS.

- (a) Order for receiver of real and personal estate, 2339.
- (b) Recognizance by a receiver and his sureties, pursuant to a decree or order, 2340.
- (c) Recognizance by a receiver and his sureties, before an order to approve, &c., 2341.
- (d) Another form of recognizance or receiver's bond, 2342.
- (e) Another form, 2342.
- (f) Recognizance of a receiver of a banking corporation, 2343.
- (g) Receiver to give sheriff statement of property he claims, 2344
- (h) Separate accounts of rents and personality; investment, 2344.
- (i) Receiver continued at the hearing, 2344.

2. MANAGEMENT OF ESTATES.

Receiver to repair buildings, 2344.

3. ACCOUNT AND PAYMENT.

- (a) Order for receiver to bring in account, 2345.
- (b) Putting recognizance in suit, 2345.

4. DISCHARGE OF RECEIVER.

Discharge and payment, 2345.

5. RECEIVER AND MANAGER OF TESTATOR'S BUSINESS, 2345.

6. RECEIVER TO PAY OFF OR KEEP DOWN CHARGES, 2346.

Annuities, 2346.

7. RECEIVER OF PARTNERSHIP BUSINESS AND PREMISES, 2346.

- (a) Receiver and manager of partnership business, 2346.
- (b) The like, pending petition to annul proceedings under one petition in Insolvency, and to obtain an order to issue a warrant on another, 2347.
- (c) Order of court on request by receiver for authority to compromise notes and accounts, 2349.
- (d) Acceptance and approval of receiver's account, 2349.
- (e) Order for the appointment of receiver, in a suit by a creditor against a foreign insurance company and their agent in Massachusetts having in his hands property which could not be come at to be attached, under the statute of Massachusetts, 2350.
- (f) Decree discharging such agent upon his paying the amount reported in his hands to the receiver, 2351.
- (g) Order of reference to a Master to report the amount to be allowed as compensation to receiver, and the balance remaining in his hands, 2352.
- (h) Order on receiver to pay out of funds in his hands the taxable costs of suit, and the balance to the plaintiff on account of his claim, 2352.

8. RECEIVER AND MANAGER ABROAD, 2353.

Receiver of property in Italy, with leave to appoint agent there, to litigate rights, 2353.

SECTION V. PRODUCTION AND DISCOVERY.

1. PRODUCTION AND INSPECTION OF DOCUMENTS.

- (a) To deposit in court documents admitted by answer, 2353.
- (b) For inspection thereof out of court (with leave to seal up), 2354.

2. DELIVERY OUT OF DOCUMENTS.

- (a) To a party or purchaser, 2354.
- (b) To a party's solicitor, to be produced in evidence, 2354.

SECTION VI.

1. DECREES PRO CONFESSO.

- (a) Where defendant does not appear at the hearing, 2355.
- (b) Another form, 2355.
- (c) Where defendant appears and waives objections, 2355.

SECTION VII.

1. DISMISSAL AT THE HEARING.

- (a) Dismissal of bill, 2355.
- (b) As to part of the bill, 2356.
- (c) With costs as to some defendants, and without costs as to others, 2356.
- (d) Where plaintiff does not appear, 2356.
- (e) Dismissal with costs, reasons stated, 2356.
- (f) Dismissal without prejudice; reasons stated, 2356.
- (g) Dismissal on case agreed, 2357.
- (h) Dismissal; reasons stated; costs; without prejudice to right to bring another suit, 2357.
- (i) Dismissal framed to prevent prejudice, 2358.

SECTION VIII.

1. LEAVE TO ENTER DECREE NUNC PRO TUNC, 2358.

2. REVIVOR AND SUPPLEMENT.

- (a) Order to revive, 2358.
- (b) Order to revive, on marriage of female sole plaintiff, 2359.
- (c) Order to carry on suit against assignees of bankrupt or insolvent defendant, 2359.
- (d) Same; by committee [or guardian] of plaintiff, a lunatic, before decree, 2359.

3. DECREES, ON SUPPLEMENTAL BILL, TO CARRY ON PROCEEDINGS.

- (a) Decree to carry on proceedings, 2359.
- (b) Same; on supplemental bill in the nature of bill of revivor, though original decree was made after suit abated, 2360.

4. DISPENSING WITH, OR APPOINTING, A REPRESENTATIVE.

- (a) Order to carry on proceedings without a representative, 2360.
- (b) Order appointing plaintiff to represent deceased plaintiffs, 2360.

5. SALE UNDER DECREE OR ORDER.

- (a) Order of sale under insolvent laws of Massachusetts; application of procer is to incumbrances; balance of debts, if any, to be proved; surplus of proceeds, if any, to await further order, 2361.
- (b) Order to pay off legal mortgagees from fund in court, on their conveying, 2361.
- (c) Decree for sale of real estate held as partnership property, proceeds to discharge mortgages, and residue to pay debts of copartnership and the copartnership balance to surviving partner, to whom copartnership was indebted; different parcels sold separately, any party to be at liberty to bid; separate accounts to be made of the proceeds of each parcel; confirming Master's report; letting the purchaser into possession; order *nisi* as to infants, 2362.
- (d) Order on plaintiff to pay money; defendant to release or cancel mortgage; in default of payment by plaintiff, sale; money to be paid into court to credit of cause, 2363.

SECTION IX. EXECUTION OF DECREES AND ORDERS.

- (a) Substituted service of decree or order, 2364.
- (b) Order of sequestration on return of attachment, 2364.
- (c) Order to turn over to prison, where party brought up on attachment, or by *habeas*, 2364.
- (d) Order for sequestration; corporation, 2365.
- (e) Writ of sequestration, 2365.
- (f) Enforcing return of writ, order for sheriff to return writ, 2366.

CHAPTER XXII.

MISCELLANEOUS DECREES AND ORDERS.

1. LEAVE FOR DEFENDANT TO ENTER APPEARANCE ON RETURN INTRA JUR. AND CONSENTING TO BE BOUND, 2367.
 - 1 a. DECLARATION THAT PERSONS RESIDING OUT OF THE STATE HAVE BECOME PARTIES TO THE SUIT, &c., 2367.
 2. ORDER FOR GUARDIAN AD LITEM.
 - (a) Guardian assigned on application of infant or *non compos*, 2367.
 - (b) Another form; infants, 2368.
 - (c) Another form, 2368.
 3. ORDERS FOR LEAVE TO AMEND.
 - (a) Order for leave to amend an injunction bill sworn to, on petition praying for leave to amend bill, by rectifying such statements as were not within plaintiff's actual knowledge when the bill was drawn, according to what plaintiff now believes to be true, and by omitting such matters as were alleged in the bill on plaintiff's belief only, and are immaterial, and by inserting other matters and charges, as plaintiff should be advised to be material, 2368.
 - (b) To withdraw replication and amend, 2369.
 4. ANSWERS.
 - (a) To put in answer in foreign language, 2369.
 - (b) Order on the hearing of exceptions for insufficiency, 2369.
 5. DEMURRER AND PLEA.

Order on hearing demurster or plea, 2370.
 6. DEFENDANT OUT OF JURISDICTION.
 - (a) Order for service of bill on defendant out of jurisdiction, 2371.
 - (b) Order for plaintiff to be at liberty to appear for defendant served with bill out of the jurisdiction, 2371.
 - (c) Order to take bill *pro confesso*, defendant being out of jurisdiction, 2372.
 7. DECREE CONFIRMING ORDER PREVIOUSLY MADE DE BENE IN A CAUSE, 2372.

**RULES OF PRACTICE FOR THE COURTS OF EQUITY OF THE UNITED
STATES, 2375.**

GENERAL INDEX	2373
INDEX TO THE APPENDIX OF FORMS.	2697

APPENDIX OF FORMS.

VOL. III.—I



APPENDIX OF FORMS.

PART I. BILLS AND INFORMATIONS.

CHAPTER I.

FORMS OF TITLES, ADDRESSES, COMMENCEMENTS AND CONCLUSIONS OF ORIGINAL SUITS BY INFORMATION OR BILL.

SECTION I.—*Title.*¹

English.]
In Chancery.

1.

Lord Chancellor.

Vice Chancellor.

[or the Master of the Rolls].

Between A. B. Plaintiff.
C. D. Defendant.²

¹ The title of the suit is a collection of the names of the plaintiff, as they appear in the introductory part of the bill, and of the defendants as they are set forth in their proper order; and care should be taken that the names are the same in both cases. Where the plaintiff sues on behalf of himself and others, or is under disability, it is usual to state that fact in the title of the bill, and of the future proceedings in the cause; as thus:—

"Between John Lee, on behalf of himself and all other the creditors of A. B., deceased . . . plaintiff."

Or,

"John Lee, a person of unsound mind, by C. D., the committee of his estate, and the said C. D. . . . plaintiff."

Or,

"John Lee, a person of unsound mind, not so found, by C. D., his next friend . . . plaintiff."

Or,

"Jane Lee, wife of the defendant John Lee, by C. D., her next friend . . . plaintiff."

Where also the defendant is stated to be out of the jurisdiction, or is named as a formal

party only, the title should so express it; as thus:—

"Henry Jones, out of the jurisdiction."

Or,

"James Styles, to be bound upon service of a copy of the bill."

It is not usual to state in the title of the bill that a defendant is under disability, but after a guardian *ad litem* of such defendant has been appointed, that fact should be stated in the title of all future proceedings; as thus:—

"James Styles, an infant, by Edward Styles, his guardian."

Or,

"James Styles, a person of unsound mind, not so found, by Edward Styles, his guardian."

Or,

"James Styles, and Amy, the wife of the said James Styles, by Edward Styles, her guardian."

² See ante 152 n., 359, 360, 389, 405. The discussion of all matters of form will be found

*1878

* SECTION II. — *Address.*¹

2.

English.] To the Right Honorable Frederic, Baron Chelmsford, of Chelmsford, in the County of Essex, Lord High Chancellor of Great Britain.

3.

(*Where the Chancellor or person holding the seals is a party.*) To the Queen's Most Excellent Majesty, in her High Court of Chancery.

4.

*United States Circuit Courts.] To the Judges of the Circuit Court of the United States for the District of ____.*²

5.

Massachusetts and Maine.] To the Honorable the Justices of the Supreme Judicial Court, next to be holden [or now sitting] at ____, within and for the County of ____, and Commonwealth of Massachusetts [or State of Maine], &c.

Or, thus:—

To the Honorable the Justices of the Supreme Judicial Court, sitting in Equity.

6.

New Hampshire.] Rockingham, ss. To the Supreme Judicial Court.

7.

*Vermont.] To the Honorable A. B., Chancellor of the First [or Second or other] Judicial Circuit.*³

chiefly in the notes to the preceding pages of this work, in connection with the appropriate titles.

As to parties in some States, as, e. g., in West Virginia, a bill may either follow the old Chancery practice or the form prescribed by the Code; but, even in these jurisdictions, it must do one or the other. Persons named in the caption of a bill or complaint are not thereby made parties, unless a different effect is provided for by statute. *Cook v. Dorsey* (W. Va.) 18 S. E. Rep. 468.

¹ The address should of course contain the appropriate and technical description of the Court, and must be varied accordingly. Story *Eq. Pl.* § 28. See *ante*, Vol. I. p. 857.

² 20th Equity Rule of the U. S. Courts.

³ This form is in compliance with the 1st Chancery Rule in Vermont (11 Vermont, 689), which provides that "All bills in Chancery

shall be addressed to the Chancellor, within the judicial district where the same is to be heard." But the usual form of address in practice is "To the Court of Chancery next to be held at ____, within and for the county of ____," which is in strict compliance with the Statute of Vermont (Genl. Sts. of 1863, p. 249, § 18). The requirement of the statute is that "All bills and petitions in the Court of Chancery shall be addressed to the Court of Chancery in the county where such bills are required by law to be entered or shall be pending." And since, by an Act passed in 1856 (Session Laws of Vermont of 1856, p. 13, No. 7, § 6), all former laws providing for the division of the State into judicial districts were repealed, the form of address given in this note as the usual form is doubtless the correct one.

8.

New Jersey.] To the Honorable A. O. Z., Esq., Chancellor of the State of New Jersey. [See Dick. Ch. Prac. 89.]

* SECTION III. — *Commencements.*

* 1879

9.

English, General Form.] Humbly complaining showeth [or show] unto his Lordship A. B., of, &c. [or A. B., of, &c., and C. D., of, &c.],¹ the above-named plaintiff [or plaintiffs].

10.

Circuit Courts of the United States.] "A. B., of —, and a citizen of the State of —, brings this, his bill, against C. D., of —, and a citizen of the State of —, and E. F., of —, and a citizen of the State of —, and thereupon your orator complains and says that," &c.²

11.

New Hampshire.] "A. B., of, &c., complains against C. D., of, &c., and E. F., of, &c., and says," &c.³

12.

Massachusetts.] Humbly complaining, showeth unto your honors the plaintiff, F. A. L., now of D., in the County of N., and Commonwealth of Massachusetts, executor of the last will and testament of J. H. L., late of B., in the County of S., and Commonwealth aforesaid, physician, deceased, that the said J. H. L., in his lifetime, &c.

Or, thus:—

S. R., of B., in said County of S., merchant, and executor and trustee under the last will and testament of E. S., late of said B., widow, brings this, his bill [or bill of complaint] against J. E. H., of C., in the State of O., E. S. L., of B., in the State of M., and the — Company, a corporation duly established under the laws of Massachusetts; and thereupon the plaintiff complains and says, that the said E. S., by her, &c.

¹ See note, Vol. I p. 357.

² 20th Equity Rule of the U. S. Courts.

³ In New Hampshire, "every bill in the introductory part shall contain the names, places

of abode, and proper description of all the parties, plaintiffs and defendants, by and against whom the bill is brought." Chancery Rule, 2, 33 N. H. 605.

SECTION IV.—*Commencement in Special Cases.*

13.

Husband and Wife.] Humbly complaining, show, &c., A. B., of, &c., and C. B., his wife.

* 1880

* 14.

Wife suing alone.] Humbly complaining, &c., A. B., of, &c., wife of B. B., of the same place, by E. F., of, &c., her next friend.

15.

Wife by next friend: husband a defendant.] Humbly, &c., C. B., the wife of the defendant A. B., by E. F., of, &c., her next friend, the above-named plaintiff, as follows:

16.

Same: Husband residing abroad.] Humbly, &c., C. B., of (*residence*), the wife of A. B., who is now residing at G., out of the jurisdiction of this Honorable Court, by E. F., of, &c., her next friend, the above-named plaintiff, as follows:

17.

Wife as a feme sole.] Humbly, &c., C. B., of (*residence*), the wife of A. B., of, &c., suing as a *feme sole* [*or*, but who has obtained a statutory order for protection from her husband], the above-named plaintiff, as follows:

18.

Infants.] Humbly complaining, &c., A. B. and C. B., of, &c., infants under the age of twenty-one years, by E. F., their next friend.

19.

Lunatics, &c.] Humbly complaining, &c., A. B., of, &c., a lunatic [*or non compos mentis*], by E. F., of, &c., his guardian [*or* next friend, when plaintiff is of unsound mind, but not so found by inquisition] [*or* committee of the (person and) estate of the said A. B.], that, &c.

Or,

A. B., of, &c., by C. D., of, &c., committee of the [person and] estate of the said A. B., and the said C. D., &c.

20.

Assignee of Insolvent Debtor.] Humbly complaining, &c., A. B., of, &c., assignee of the estate and effects of C. D., &c., an insolvent debtor, &c.

21.

A person deaf and dumb.] Humbly complaining, &c., A. B., of, &c., being deaf and dumb, by C. D., of, &c. trustee, his next friend, &c.

22.

Banking Corporation.] Humbly complaining, &c., the President, Directors, and Company of, &c., a corporation duly established by law within the State [or Commonwealth] of, &c.

23.

* 1881

Railroad Corporation.] Humbly complaining, &c., The Boston and Worcester Railroad Corporation, &c.

24.

Municipal Corporation.] Humbly complaining, &c., The Mayor, Aldermen, and Commonalty [or citizens] of the City of, &c. [or The City of, &c., or The Inhabitants of the Town or City of —], in the County of, &c.

25.

Foreign Corporation.] Humbly complaining, &c., The Governor and Company of the Bank of Scotland [or The Dutch West India Company], &c.

26.

Foreign Republican State.] Complaining show unto his Lordship, the United States of America, the above-named plaintiffs, &c.¹

¹ *United States v. Wagner*, L. R. 2 Ch. 582; *United States v. Prioleau*, 2 H. & M. 559; *United States v. McRae*, L. R. 2 Eq. 327.

In suits by foreign monarchical States, the sovereign sues as the person in whom the public property is vested for the benefit of the State. *United States of America v. Wagner*, Law Rep. 2 Ch. Ap. 582, p. 587, per Lord Chelmsford, p. 582, per Sir G. J. Turner, L. J., pp. 593, 594, per Lord Cairns; *Emperor of Austria v. Day*, 3 D. F. & J. 217; *King of Spain v. Machado*, 4 Russ. 225; *King of Two Sicilies v. Wilcox*, 1 Sim. N. S. 301.

In a Republic, on the other hand, the sovereign power, and with it the public property, is held to remain and reside in the State itself, and not in any officer of the State. It is from the State that an ambassador is accredited, and it is with the State that the diplomatic intercourse is conducted; and, in such case, the suit is not to be brought in the name of the President, but in that of the State. *United States v. Wagner*, Law Rep. 2 Ch. 593, 594, per Lord Cairns.

27.

Creditor, suing on behalf of himself and others.] A. B., &c., on behalf of himself and all other unsatisfied creditors of E. F., &c., who shall come in and contribute to the expenses of this suit, &c.

28.

Shareholders in a Company.] A. B., &c., on behalf of himself and all other the shareholders [except the defendants hereto] in a certain company called "—"

29.

Attorney-General on behalf of the Government.] Informing showeth, &c., C. A., &c., Attorney-General of the State [or Commonwealth] of, &c., on behalf of the said State [or Commonwealth], &c.

* 1882

* 30.

Same where there is a Relator.] Informing showeth, &c., C. A., &c., Attorney-General, &c., at and by the relation of the Rector, Wardens, and Vestry of — Church in L., &c., for and in behalf of themselves and the rest of the Parishioners, &c.

31.

Same where the Case is by Information and Bill.] Informing, &c., at and by the relation of A. B., &c., and C. D., &c. and also humbly complaining, show, &c., the said A. B. and C. D., &c.

32.

Same, on behalf of a Lunatic.] Informing showeth C. A., Attorney-General of the State, &c., on behalf of D. F., of (residence), a lunatic, at and by the relation of O. P., of (residence and addition), as follows:

SECTION V.—The Premises or Stating Part (after narrating the facts and circumstances of the plaintiff's case) concludes.¹

33.

And your orator [or the plaintiff²] hoped that the said C. D. [the defendant] would have complied with the reasonable requests of your orator [or the plaintiff] as in justice and equity he ought to have done.

¹ In regard to the stating part of the bill, see are omitted they shall be referred to as plaintiff or defendants." Modern English bills Vol. I. p. 360 *et seq.*

² By 7th Chancery Rule in New Hampshire it is provided that, "when the names of parties employ the terms "plaintiff" and "defendant" throughout.

SECTION VI. — *The Charge of Confederacy.*¹

34.

BUT NOW SO IT IS, may it please your honors [or your honor], that the said R. H., combining and confederating with divers persons [or if there are several defendants, then thus — combining and confederating * together and with divers persons] at present un- * 1883 known to your orator [or the plaintiff] whose names, when discov- ered, your orator [or the plaintiff] prays he may be at liberty to insert herein with apt words to charge them as parties defendants hereto, and contriving how to wrong and injure your orator [or the plaintiff] in the premises, he, the said R. H., absolutely refuses to comply with such requests, and he at times pretends that, &c.

Another form.

But now so it is, may it please your honors [or your honor], that the said R. H., L. M., and N. M., in concert with each other, allege that, &c. [or colluding and confederating with each other, refuse to comply with such requests, and pretend that, &c.].

SECTION VII. — *The Charging Part.*²

35.

Whereas, your orator [or the plaintiff] charges the contrary to be the truth, and that, &c.

SECTION VIII. — *The Jurisdiction Clause.*²

36.

All which actings, doings, and pretences of the said defendant [or defendants] are contrary to equity and good conscience, and tend to the

¹ It was formerly customary in almost every bill to introduce a general charge of confederacy against the defendants. But there is no such statement in the model of a bill given in England by the general orders of 1852, and it is scarcely necessary to say that such a charge would now in that country be deemed idle and impertinent, except under very special circumstances. This charge is said to be wholly unnecessary, and to be treated as mere surplusage in Story Eq. Pl. § 29. By the 21st Equity Rule of the U. S. Courts, it is provided that: "The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff." By the 7th of the Equity Rules of Massachusetts: "The common charge of fraud and com-

bination shall be omitted, except when it is intended to charge fraud and combination specifically." So by the 1st of the Chancery Rules in Maine: "The formal averments of combination and pretence shall be omitted." So by the 2d of the Chancery Rules in New Hampshire, the Common Confederacy Clause may be omitted.

¹ See the 21st Equity Rule of the U. S. Courts, stated *post*, p. 2380. By the 3d of the Chancery Rules in New Hampshire, the charging part of the bill may be omitted. In Massachusetts, the plaintiff may, when his case requires it, allege, by way of charge, any particular fact, for the purpose of putting it in issue. 7th Chancery Rule. The model of a bill given in schedule to orders of Aug. 7th, 1852, in England, contains no charging part.

² See the 21st Equity Rule for the U. S.

manifest wrong, injury, and oppression of your orator [or the plaintiff] in the premises. In tender consideration whereof, and forasmuch as your orator [or the plaintiff] is remediless in the premises, at and by the strict rules of the Common Law, and is relievable only in a Court of Equity, where matters of this nature are properly cognizable and relievable. To the end, therefore, &c.

* 1884

* SECTION IX. — *Interrogating Part.¹*

37.

To the end, therefore, that the said C. D., E. F., and G. H., and their confederates, when discovered, may, *upon their several and respective corporal oaths*, to the best and utmost of their respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid [or if an answer on oath is meant to be waived, omit the words in italics, and insert at this place (your orator, or, the plaintiff, hereby waiving, pursuant to the statute, the necessity of the answer of such defendants, being put in under the oaths of the said defendants, or the oath of either of them)], and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto, and more especially that they may, in manner aforesaid, answer and set forth whether, &c. [*Here insert the interrogatories to be answered by the defendants, directing what interrogatories are to be answered by each.*]

Or, in the Circuit Court of the United States thus :

“To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they are respectively required to answer, that is to say, —

“1. Whether, &c.

“2. Whether, &c.”²

Courts, *post*, p. 2380. The plaintiff may omit this clause by the 3d of the Chancery Rules in New Hampshire. A precise averment of jurisdiction in the Court is now obsolete in England, and was never absolutely requisite.

¹ By the 3d of the Chancery Rules in New Hampshire, the plaintiff may omit the prayer for an answer and for answers to interrogatories, except where he relies on the discovery of the defendant. In Maine, “A general interrogatory only shall be introduced into the bill, and it shall be sufficient to require a full answer to all the matters alleged.” 1st Chancery Rule. And by 8th Chancery Rule in Massachusetts: “The defendant shall be required to answer fully, directly, and particu-

larly to every material allegation or statement in the bill, as if he had been thereto particularly interrogated.” By the 7th Rule, in this State, the plaintiff, when his case requires it, may propose specific interrogatories. It is now precisely enacted, in England, “that the bill of complaint shall not contain any interrogatories for the examination of the defendant.” 15 & 16 Vic. c. 86, § 10; but by § 12, if the plaintiff, in a suit commenced by bill, shall require an answer, he may file interrogatories in the proper office of the Court, and no defendant shall be required to put in any answer to a bill unless interrogatories have been so filed, &c. See *ante*, Vol. I. p. 374.

² The 43d Equity Rule of the U. S. Courts;

* SECTION X.—*Prayer for Relief.*¹

* 1885

38.

And that an account may be taken by and under the direction and decree of this honorable Court, &c., &c. And that the defendant may be decreed to pay unto your orator [or the plaintiff], &c., &c. And that your orator [or the plaintiff] may have such further or other relief in the premises as the nature of the circumstances of this case may require, and to your honor shall seem meet.²

A more extended form.

Prayer for answer, oath waived — injunction against proceeding at Law — declaration of trust — conveyance: “To the end, therefore, that the plaintiffs may have that relief which they can only obtain in a Court of Equity, and that the said defendants may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by the plaintiffs, and that the said defendants, who are plaintiffs as aforesaid in the said action at Law, may be perpetually enjoined from further prosecuting the same, and that it may be declared that the said lands are charged with a trust in favor of, and ought to be held for, the use and benefit of, &c., and that the said defendants, or so many and such of them as shall appear to have the legal title to said lands, may be decreed to convey such legal title, free of all incumbrances done or suffered by them, or any or either of them unto the plaintiffs, in their said capacity, to hold to them and their, &c., upon the trusts aforesaid, and for such further or other relief as the nature of this case may require, and to your honors seem meet.”³

39.

Prayer to restrain proceedings at Law, and for an injunction.] And that the said C. D., &c., their counsellors, attorneys, solicitors, officers, or agents may be restrained by an injunction issuing out of this Court, from proceeding further against your orator [or the plaintiff] in the said action commenced against him in the, &c., Court of, &c., and now pending and at issue therein, for the recovery of, &c. And that your

Story Eq. Pl. § 847, note. By Equity Rule 41, United States Courts, “The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other, and numbered consecutively, 1, 2, 3, &c.; and the interrogatories which each defendant is required to answer, shall be specified in a note at the foot of the bill, in the form and to the effect following; that is to say, The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3,” &c. See *ante*, Vol. I. pp. 376, 377, in note.

¹ See the 21st Equity Rule of the U. S. Courts, *post*, p. 2330. In New Hampshire, the

bill may conclude, “and thereupon the plaintiff prays,” setting forth the special relief to which he supposes himself entitled, “and for such other relief as may be just.” If an injunction or other special order, pending the suit, is required, it may be specially asked for. Rule 3d of Chancery Rules.

In England, the bill concludes with a prayer, specifically for the relief which the plaintiff may conceive himself entitled to, and also for general relief. *Ante*, p. 877 *et seq.*

² Story Eq. Pl. § 40, note.

³ Earle v. Wood, 8 Cush. 430.

* 1886 orator [or the plaintiff] may have, &c. [Prayer for general relief.] * May it please your honor to grant unto your orator [or the plaintiff] a writ of injunction, issuing out of and under the seal of this honorable Court, to be directed to the said C. D., &c., &c., commanding them and each of them absolutely to desist and refrain from proceeding further against your orator [or the plaintiff] in said action.

40.

Prayer for a ne exeat.] And that the said defendants may be stayed by a writ of *ne exeat regno* from departing out of the jurisdiction of this Court. And your orator [or the plaintiff], &c. [Prayer for general relief.] May it please your honors to grant unto your orator [or the plaintiff] a writ of *ne exeat regno*, staying the said C. D. and E. F., or either of them, from departing into parts beyond this State, and out of the jurisdiction of this Court, without leave first had.

Or, thus : [Modern English Form.]

Charges and prayer in a bill to obtain a writ of ne exeat.] The defendant, C. D., is a natural-born British subject, but he is possessed of large estate in the Island of St. Croix, and is permanently settled, and has his fixed place of abode in the said Island, which is out of the jurisdiction of this Court.

That the defendant is now, and has for some time been on a visit to this country, and is staying at, &c.; but he means and intends very shortly to leave England, and to return to his residence in the said Island of St. Croix, in which case the plaintiffs charge, that they will be without remedy in the premises [or in danger of losing their debt or claim] and altogether deprived and defrauded of the money so justly due and owing to them as aforesaid.

The plaintiffs therefore submit that the said defendant ought to be restrained from quitting this kingdom, and that her Majesty's writ of *ne exeat regno* ought to issue for that purpose.

Prayer.

[After the former part of the prayer.]

That in the mean time the defendant —— may be restrained by her Majesty's writ of *ne exeat regno*, issuing out of and under the seal of this honorable Court, from leaving the kingdom [or from going to any part beyond the seas, or to Scotland, without the leave of this honorable Court], and that the said writ may be marked with the sum of \$ ——, as a direction for the sheriff to take bail therein.

41.

Prayer for an account of rents and profits of mortgaged premises, and sums received by mortgagee in possession.] And that an account may be

taken of the rents and profits of the said mortgaged premises, * which have been received by the said defendant, since his possession thereof as aforesaid, or which, but for his wilful default or neglect, might have been so received; and also an account of all other the sums, which have been received by the said defendant in or towards satisfaction of the said mortgage money.

42.

Prayer for the production of Deeds, Papers, &c.] And that the said defendants may set forth a list or schedule, and description of every deed, book, account, letter, paper, or writing relating to the matters aforesaid, or either of them; or wherein or whereupon there is any note, memorandum, or writing, relating in any manner thereto, which now are, or ever were, in their or either, and which, of their possession or power, and may deposit the same in the office of the clerk [or in the hands of one of the masters] of this honorable Court, for the usual purposes; and otherwise that the said defendants may account for such as are not in their possession or power.

SECTION XI.—*Conclusions.*

43.

Prayer for subpoena.^{1]} May it please your honors to grant unto the plaintiff [or your orator] a writ of subpoena, to be directed to the said C. D.,² &c., thereby commanding them and each of them, at a certain time, and under a certain penalty therein to be limited, personally to appear before this honorable Court [or your honors in this honorable Court], and then and there full, true, direct, and perfect answer make to all and singular the premises, *and further to stand to, perform, and abide such further order, direction, and decree therein as to this honorable Court [or, to your honors] shall seem meet [or as shall seem agreeable to Equity and good conscience.^{3]}]*

44.

Prayer for Process where the Government is a defendant.] And may it please your honors, that the District Attorney of the United States for the District of _____ [or the Attorney-General of the State * of _____], on being attended with a copy of this bill, may appear and put in an answer thereto, and may stand to and abide

¹ By 3d of the Chancery Rules in New Hampshire, the prayer for process, unless some special process or order shall be required, may be omitted. In England, the bill contains no prayer for process. All that is required is, that the names of the defendants should be set forth, and a note appended with the names of the solicitors for the plaintiff. *Ante, Vol. I. p. 289 et seq.*, and notes.

² See 23d Equity Rule of United States Courts, *post*, p. 2380.

³ The part in italics must be omitted in bills merely for *discovery*, or to perpetuate the testimony of witnesses. Story Eq. Pl. § 44, note; Barton's Suit in Eq. 43, note (1); Equity Drafts, 6.

such order, direction, and decree in the said premises as to your honors shall seem meet.

45.

Prayer for injunction and for subpoena.] May it please your honors to grant unto the plaintiff [or your orator] not only a writ of injunction, issuing out of, and under the seal of this honorable Court, to be directed unto the said C. D., &c., &c., to restrain them, their servants, workmen, and agents, from committing waste, &c., but also a writ of subpoena, &c. [As in No. 38.]

46.

Prayer for ne exeat and subpoena.] May it please your honors, the premises considered, to grant unto the plaintiff [or your orator] not only a writ of *ne exeat regno*, issuing out of and under the seal of this honorable Court, to restrain the said defendant, C. D., from departing out of the jurisdiction of this Court, but also a writ of subpoena, &c. [As in No. 38.]

1890

ORIGINAL BILLS PRAYING RELIEF.

SECTION I.

Bills for Specific Performance of Agreements.¹

- 1. Bill by a vendor against a vendee for the specific performance of a written agreement for the purchase of real estate, the title only being in dispute.**

To, &c. [Address.]

HUMBLY complaining, showeth unto your honors the plaintiff, J. C., of, &c., that he being seised or well entitled in fee-simple of and to a certain messuage or dwelling-house with the appurtenances situate at —, and hereinafter described, and being desirous of selling such premises, and D. E., of, &c., being minded to purchase the same, the plaintiff and the said D. E., on or about the — day of —, entered into and signed a memorandum of agreement respecting the said sale and purchase in the words and to the purport and effect following, that is to say [*stating the agreement verbatim*], as by the said memorandum of agreement, to which the plaintiff craves leave to refer, when produced, will appear. And the plaintiff further shows² that the said D. E. paid to him the sum of \$1500, part of the said purchase-money at the time of signing the said agreement. And the plaintiff has * always * 1890

¹ The granting of a specific performance of a contract for the sale of land, is not a matter of right to which the party is entitled when he has proved his contract, but is always a matter of sound and reasonable discretion on the part of the Court, in view of all the circumstances of the case. *Lamare v. Dixon*, L. R. 6 H. L. 414; *Eastman v. Plumer*, 46 N. H. 464. In exercising this sound discretion, the Court will not decree a specific performance in cases of fraud or mistake, or of a hard and unreasonable bargain, or in case of great inadequacy or exorbitancy of price, or where the decree would in any way produce injustice. *Eastman v. Plumer, supra*, and the cases there cited and other points therein made. See the same case also in reference to the effect of delay in claiming specific performance.

See, as to the Court refusing to enforce an unconscionable bargain, *Miss. & Mo. R. Co. v. Cromwell*, 91 U. S. 643; *Iglehart v. Vail*, 78 Ill. 63; *Thurston v. Arnold*, 53 Iowa, 41; *Snell v. Mitchell*, 65 Me. 48; *Wistar's Appeal*, 80

Penn. St. 484. So where performance is impossible. *Peck v. Gaither*, 78 N. C. 95.

There are many equitable circumstances not amounting to illegality or actual fraud in the contract, which may properly induce a Court of Equity to refuse to decree a specific performance of the contract, and to leave the party to his remedy at Law for a non-performance, which would not be sufficient to warrant the Court in setting aside the contract of sale. *Eastman v. Plumer, supra*.

As to damages in such suits, see *Lehmann v. McArthur*, L. R. 3 Eq. 746; *Lewers v. Earl of Shaftesbury*, 16 L. T. N. S. 135. For form of prayer, see *Loames v. Edge, Johns*. 671.

² By the 7th Chancery Rule in New Hampshire, it is provided that "the idle repetitions," "your orator further complains," "your orator further showeth to your honors and the like in bills," "shall be omitted, and when the names of parties are omitted, they shall be referred to as plaintiffs or defendants."

been ready and willing to perform his part of the said agreement, and on being paid the remainder of his said purchase-money with interest, to convey the said messuage to the said D. E., and his heirs, and to let him into the receipt of the rents and profits thereof, from the time in the said agreement in that behalf mentioned; and the plaintiff hoped that the said D. E. would have performed the said agreement on his part as in justice and equity he ought to have done. But now so it is, may it please your honors, that the said D. E. alleges, that he is, and always has been, ready and willing to perform the said agreement on his part in case the plaintiff could have made, or can make a good and marketable title to the said messuage and premises, but that the plaintiff is not able to make a good title thereto; whereas the plaintiff charges that he can make a good title to the said messuage and premises. To the *end* therefore that the said D. E. may true answer make to the premises aforesaid, and more particularly that he may answer and set forth in manner aforesaid, whether, &c. [*Interrogating to the stating and charging parts.*] And that the said D. E. may be compelled by the decree of this honorable Court specifically to perform the said agreement with the plaintiff, and to pay to him the remainder of the said purchase-money with interest for the same from the time said purchase-money ought to have been paid, the plaintiff being willing, and hereby offering specifically to perform the said agreement on his part, and on being paid the said remaining purchase-money and interest to execute a proper conveyance of said messuage and premises to the said D. E., and to let him into possession of the rents and profits thereof from the said — day of —. And that the plaintiff may have such further and other relief in the premises as to your honors shall seem meet and this case may require; may it please your honors, &c. [*Prayer for subpoena, as in form 43, ante, p. 1887.*]

2. *Modern English form of bill for specific performance of agreement for purchase of an estate.*

Title and Address.

Humbly complaining, &c., A. B., of, &c., the above-named plaintiff, as follows: —

1. In and previously to the month of June, 1851, the plaintiff was absolutely entitled to a certain estate called, &c., situate at, &c., in the county of —.

2. On the — day of June, 1851, the defendant agreed to purchase the said estate; and a memorandum of such agreement was reduced into writing, and duly signed by the defendant. Such memorandum was in the words and figures, or to the purport and effect following

[*Memorandum set out.*]

* 1891 3. * The plaintiff has frequently applied to the defendant, and requested him to perform the said agreement, but he has refused or neglected to do so.

Prayer.

The plaintiff prays as follows:—

1. That the defendant may be decreed specifically to perform the said agreement of the — day of June, 1851; the plaintiff hereby offering specifically to perform the said agreement upon his part: and that for the purposes aforesaid all proper directions may be given, and inquiries made.

2. That the plaintiff may have such further or other relief as the nature of the case may require.

3. **CHARGE.** *In a bill by a purchaser against the vendor for the specific performance of a contract for sale of a freehold estate, the plaintiff charges that a part of the purchase-money has remained unproductive in his hands.*

And the plaintiff further showeth, that previously to the signing of the said agreement, the plaintiff paid unto the said S. B. the sum of \$500, as a deposit and in part of his said purchase-money or sum of \$2900; and the said S. B. has since delivered up possession of the said purchased premises to the plaintiff. And the plaintiff further showeth unto your honors, that he has always been ready and willing to perform his part of the said agreement, and, on having a good and marketable title shown to the said estate and premises, and a conveyance of the fee-simple thereof discharged of all incumbrances made to him, to pay the residue of the said purchase-money or sum of \$2900, to the said S. B. And the plaintiff hoped that the said S. B. would have specifically performed his part of said agreement as in justice and equity he ought. *But now so it is, &c. [See No. 34, p. 1882],* the said S. B. refuses to perform his part of the said agreement, and to color such refusal, he gives out and pretends that he is unable to make out a good and marketable title to the said estate and premises, and that he is willing to cancel the said contract or agreement, and to repay the said deposit or sum of \$500 to your orator. Whereas the plaintiff charges that the said S. B. is able to make out a good and marketable title to the said estate and premises, if he thinks proper to do so, but that the said S. B. refuses and declines to make out a good and marketable title to the said premises, notwithstanding the plaintiff has required him so to do, and offered to pay him the residue of the purchase-money upon having the title made out and a proper conveyance of the said premises executed to the plaintiff, his heirs and assigns, by the said S. B. And the plaintiff charges that the whole of *1892 the residue * of the purchase-money of the premises has been ready and unproductive in his hands for completing the said purchase from the time it ought to have been completed by the terms of the said agreement. All which actings, &c. [See form No. 36, p. 1883.]

4. CHARGE. *In a bill by first vendee, for a specific performance of an agreement for the purchase of an estate, against a vendor, and a subsequent purchaser from him, the plaintiff charges the subsequent purchaser with notice, and also charges the vendor with acts of waste, and prays for an injunction against both defendants to restrain waste.*

And the plaintiff charges that the said G. K. has since contracted for the sale of the said premises to the said T. P., at an advanced price, and has actually conveyed the said premises or entered into an agreement to convey the same to the said T. P., or to some other person or persons by his order, or to his use, or in trust for him. And the plaintiff charges that the said T. P., at the time he entered into the said contract for the purchase of the said premises, or at the time of the conveyance thereof to him, if the same have been conveyed to him, or at the time of the payment of the purchase-money for the same, if he has actually paid such purchase-money, well knew or had been informed, or had received some intimation, or had some reason to believe or suspect that the said G. K. had entered into such agreement as aforesaid with the said A. B., or into some agreement with the plaintiff, or with some person on his behalf for the sale of said premises to the plaintiff. And the said T. P., or the agent employed by him in the said purchase or contract, had at some or one of the times aforesaid some knowledge or intimation of the several circumstances aforesaid respecting the said premises, which had passed between the plaintiff, and the said G. K., or their solicitors. And the plaintiff charges that the said J. F. was in fact the agent employed in the contract or sale by the said G. K. to the said T. P., as well on the part of the said G. K. as of the said T. P. And the plaintiff further charges that, if, in fact, the said T. P. has paid the purchase-money for the said premises or any part thereof, to the said G. K., the said T. P. has had or taken some indemnity from the said G. K., or some other person in respect of such payment or of such purchase. And the plaintiff further charges that after he, by the said A. B., had entered into such agreement with the said G. K. as aforesaid, and after the hay season of this year, he verbally agreed with the said G. K. that the hay on the farm should be left by the said G. K. and taken by the plaintiff at an appraisement, but the said G. K. has nevertheless sold and removed the said hay from the farm, to the

* 1893 great injury thereof, and the said G. K. has, * since his said agreement with the said A. B., ploughed up more than sixty acres of land, which according to the usual course of husbandry ought to have been laid down with grass. And the said G. K. has also cut down many timber and other trees upon the said premises, and has committed and done other waste and injury thereto. And the said G. K., and also the said T. P., threaten and intend to cut down other trees on and from the said premises, and to commit other waste and injury thereto. All which actings, &c. [See forms Nos. 36 and 37, pp. 1883, 1884, interrogating to the stating and charging parts],

and that the said defendants may answer the premises ; and that the said defendant, G. K., may specifically perform the said agreement so made and entered into by him as aforesaid with the said A. B. as the agent of the plaintiff, the plaintiff being ready and willing, and hereby offering specifically to perform the said agreement in all things, on his part and behalf. And that the said G. K. may be decreed to make compensation to the plaintiff for the waste and other damage done by him to the said premises since the making of the said agreement. And that in the mean time the said defendants, G. K. and T. P., may be restrained by the order and injunction of this honorable Court from cutting down any timber or other trees upon the said premises, or from committing any other waste thereon. [And for further relief, &c.] May it please, &c. [Pray subpœna and injunction against G. K. and T. P. See forms Nos. 43 and 45, pp. 1887, 1888.]

5. *Bill by lessee against lessor for specific performance of a written agreement for a lease of a house.*

Humbly complaining, showeth unto your honors the plaintiff A. B., of, &c.; that C. D., of, &c. (the defendant hereinafter named), being or pretending to be seised or possessed of a messuage or tenement situate, &c., and being willing and desirous to let the same, he in the month of, &c., proposed and agreed to grant unto the plaintiff a lease of the aforesaid premises with the appurtenances, and thereupon the plaintiff and the said C. D. duly executed or subscribed a certain memorandum or agreement, bearing date, &c. [*stating the agreement*], as in and by, &c. And the plaintiff further showeth that in expectation and full confidence that a lease would have been made and executed to him of the said messuage or tenement and premises, pursuant to the terms of the said agreement, the plaintiff has laid out sundry sums in repairs on the said premises to a considerable amount. And the plaintiff further showeth that he has been always ready to perform his part of the said agreement, and to accept a lease of the said premises pursuant to the terms thereof. And the plaintiff for that purpose caused a draft of a lease to be drawn pursuant to the terms of the aforesaid agreement, * and tendered the same to the said defendant for his perusal and * 1894 approbation, but he refused to accept or peruse the same. And the plaintiff further showeth that he has frequently by himself and his agents applied to the said C. D., and in a friendly manner requested him to make and execute unto the plaintiff a lease of the said messuage or tenement and premises conformably to the said agreement. And the plaintiff well hoped, &c. But now so it is [See form No. 34, p. 1882], defendant pretends that no such agreement as aforesaid was ever made or entered into by or between the said defendant and the plaintiff, or any agreement, or that he consented to grant a lease to the plaintiff of the aforesaid messuage or tenement and premises. Whereas the plaintiff charges the contrary of said pretences to be the truth, and so the said confederate will at other times admit; but then he pretends

that he has been always ready and willing to make and execute a lease of the said messuage or tenement and premises, pursuant to the terms of the said agreement, and in all respects to perform the same on his part. Whereas the plaintiff charges the contrary thereof to be the truth. But nevertheless the said defendant refuses to comply with the plaintiff's aforesaid requests to perform or fulfil the aforesaid agreement. All which actings, &c. [See form No. 36, p. 1883.] And that the said agreement may be specifically performed and carried into execution, and that the said defendant may be decreed to execute a lease of the aforesaid messuage or tenement and premises to the plaintiff according to the terms of the aforesaid agreement, the plaintiff hereby offering to execute a counterpart thereof, and in all other respects to perform his part of the said agreement [and for further relief see form No. 38, p. 1885.] May it please your, &c. [Pray subpoena against C. D.]

6. Bill for specific performance of an agreement to convey real estate, against an administrator and minor children.

To the Honorable, &c.

A. B., of, &c., humbly complaining, sheweth that C. D., of, &c., &c., being seised and possessed of a certain parcel of real estate, situate, &c. (*give the description and boundaries*), entered into a written agreement with the plaintiff for the purchase and sale thereof, as follows, viz. (*state the agreement*) [or a copy of which agreement is hereto annexed], as by the said agreement, which the plaintiff has here in Court ready to be produced, and to which he craves leave to refer, will appear [or as by said agreement hereto annexed will appear]. And the plaintiff further shows that, pursuant to the said agreement, he has paid the taxes on the said premises for the year, &c., amounting to the sum of \$_____. And the plaintiff further shows, that, since the making of the said agreement, to wit, on the, &c., the said C. D. died intestate,

* 1895 *and that, during his lifetime he never made any conveyance of the said premises to the plaintiff, that the said C. D. left a widow, M. A. D., and four children, viz., M. D., L. D., M. A. D., and J. D., all of whom are minors under the age to twenty-one years, and the sole heirs of the said C. D. That S. K., of, &c., Esq., has been duly appointed administrator of the goods and estate, which were of the said C. D.; but no person, as yet, has been appointed guardian of the said minor children. And the plaintiff further shows that he is desirous of obtaining a conveyance of the said real estate, pursuant to the terms of said agreement between the plaintiff and the said C. D., deceased, and is willing and ready to pay therefor the price stipulated in the said agreement in cash, or to give his note of hand, secured by mortgage of the premises, as is provided in the said agreement, and further that he is willing to waive any claim which he has upon the heirs of the said C. D., or upon his administrator, to advance the sum of \$_____, upon the erection by him of two dwelling-houses

on the said real estate, as the said C. D. agreed that he would do. And the plaintiff further shows that he has made application to the said M. A. D., the widow of the said C. D., and ascertained that she is willing to release to the plaintiff her dower in the premises, upon having the interest of one-third part of the purchase-money secured to and paid to her during the period of her natural life, or having paid to her an amount equal to the present value of her said life-interest. But by reason that the said C. D. died intestate, there is no person who has legal authority to execute a deed, whereby to convey to the plaintiff the fee of the said real estate, of which the said C. D. died seised. In consideration whereof, &c. *To the end, therefore, that the said S. K., the said M. D., the said L. D., M. A. D., and J. D. may, upon their several and respective oaths, &c., &c. [See form of interrogating part, ante, No. 37, p. 1884], and that the said S. K., and the said M. D., L. D., M. A. D., and J. D., may be decreed specifically to perform the said agreement entered into by the said C. D. with the plaintiff, the plaintiff being ready and willing and hereby offering specifically to perform the said agreement on his part, and that the plaintiff may have such other and further relief, &c., &c. (Prayer for a subpoena.)*

7. Allegations and prayer in a bill for specific performance of a parol agreement, the plaintiff relying upon part-performance, according to the modern English form.

(The bill stated the lease under which the plaintiff claimed, and negotiations for purchase by the defendant.)

On the —— day of —— it was agreed by and between the plaintiff and defendant, that the defendant should give the plaintiff \$ —— for the purchase of the plaintiff's term and interest in the said leasehold* premises under the said lease, he, the defendant, taking *1896 the plaintiff's title, such as it was, and the plaintiff consenting to do certain works to the premises, which the defendant then specified (that is to say), &c.

(Subsequent correspondence and statement of the works required by the defendant to be performed to the premises.)

The plaintiff, in pursuance of the said agreement so entered into between the plaintiff and defendant as aforesaid, performed all the works so agreed to be performed by him to the premises; and the plaintiff, in pursuance of the said agreement, and in full faith and reliance that it would be performed on the part of the defendant, permitted the defendant to enter into, and he did accordingly on, &c., enter into and remain in possession of the said premises.

The defendant, however, now refuses to perform the said agreement on his part, and he alleges that no contract has been entered into by or between the plaintiff and defendant for purchasing the said premises for the term and interest of the plaintiff therein, under and by virtue of the said indenture of lease: whereas the plaintiff charges the contrary thereof to be truth.

The defendant, at other times, alleges that he has not accepted the title of the plaintiff as shown by said indenture of lease; whereas the plaintiff charges that the defendant has accepted the plaintiff's title to the premises, and has so admitted to the plaintiff and to other persons.

[*Charge as to documents.*]

Prayer.

The plaintiff may pray as follows:—

1. That the agreement so made or entered into by or between the plaintiff and defendant for the purchase of the term and interest of the plaintiff in the said leasehold messuage and premises may be specifically performed by the defendant, the plaintiff being willing to perform the same so far as it remains on his part to be performed.

2. That proper directions may be given for settling an assignment of the said premises to the defendant for the remainder of the plaintiff's term therein, with a proper covenant therein to indemnify the plaintiff against the payment of the rent and observance of the covenants respectively reserved and contained in the said indenture of lease; and that the defendant may be decreed to execute such assignment or a counterpart thereof, and that upon the execution of the assignment by the plaintiff, the defendant may be decreed to pay the said purchase-money of \$—— to the plaintiff, together with interest at the rate of \$—— per centum per annum from, &c., together with the costs of this suit.¹

3. [For further relief, &c.]

* 1897 * 8. *Prayer of a bill of a surety to compel a specific performance of an agreement to execute a mortgage to indemnify the plaintiff from all liability; praying also for a writ of ne exeat regno.*

And that the defendant may be decreed specifically to perform the said agreement, and to make a mortgage to the plaintiff of the said estate and premises to indemnify him against the obligation he has entered into in the Admiralty Court as hereinbefore mentioned. And that it may be referred to a master to settle such conveyance if the parties should differ about the same. And that the defendant may be restrained from going out of the jurisdiction of this honorable Court, into parts beyond the seas or into ——, and that for that purpose a writ of *ne exeat regno* may be issued out of and under the seal of this honorable Court to restrain the defendant from going out of the State [or Commonwealth] of, &c., [or into parts beyond the seas, or out of the jurisdiction of this honorable Court.] [General relief.]

¹ In a bill, as well as claim, by a vendor against a purchaser for a specific performance of an agreement, if the plaintiff relies upon an acceptance of title by the defendant, as a ground for dispensing with the usual inquiry as to title, there must be a specific charge to

that effect, although the facts and circumstances stated in the bill should warrant the conclusion that the title has been accepted. Clive v. Beaumont, 1 De G. & S. 397; Gaston v. Frankum, 2 De G. & S. 561.

9. *A bill to enforce the specific performance of a contract to make a policy of insurance.¹*

To the Judges of the Circuit Court of the United States, for the District of Massachusetts.

The Union Mutual Insurance Company, a corporation duly established by the laws of the State of New York, doing business at the city of New York, in the State of New York, bring this their bill of complaint against the Commercial Mutual Marine Insurance Company, a corporation duly established by the laws of the Commonwealth of Massachusetts, doing business at the city of Boston in said Commonwealth.

And thereupon your orators complain and say, that in and by their charter and by the laws of the State of New York, they were, on the second day of November, eighteen hundred and fifty-three, and ever since have been, authorized and empowered to make insurance, among other things, against loss by the perils of the seas and against loss by fire; that your orators on the said second day of November, underwrote and caused one D. McKay to be insured for whom it might concern, payable in the event of loss to the said McKay, on one-eighth of the good ship Great Republic, the said ship having been valued at one hundred and seventy-five thousand dollars, the sum of twenty-two thousand dollars, for the term of one year at and from the second day of November, eighteen hundred and fifty-three, at noon, until the second day of November eighteen hundred and fifty-four, at noon, against loss * from sundry designated risks, and especially from loss from the perils of the seas and from loss by fire, as will more fully appear from a copy hereunto annexed and made a part of this bill, of the policy issued by your orators to the said D. McKay.

Your orators further say, that thereafter the aforesaid insurance so made by your orators upon the Great Republic, and on the night of the twenty-sixth of December, eighteen hundred and fifty-three, the said ship was totally destroyed and lost by fire, one of the perils insured against; that your orators thereupon became liable to pay, and thereafter such loss did pay, to the said D. McKay the full sum of twenty-two thousand dollars, the amount so as aforesaid by your orators underwritten.

Your orators further say that after they had insured the said McKay, as aforesaid, and before the loss aforesaid of the said ship, and before the commencement of the fire by which its destruction was produced, your orators requested and authorized Charles W. Storey, of Boston aforesaid, insurance broker, to cause and procure your orators to be reinsured in the sum of ten thousand dollars upon the said Great Republic, for the term of six months, against all and singular the risks by your orators theretofore assumed, and especially against loss from the perils of the seas and from fire.

Your orators further say, that the said Charles W. Storey, as the agent of your orators, in that behalf duly authorized and in their name

¹ Union Mut. Ins. Co. v. Commercial Mut. Mar. Ins. Co., 2 Curtis, 524.

and behalf, on Saturday, the twenty-fourth day of December, eighteen hundred and fifty-three, made application to the said defendants for the reinsurance by them of your orators upon the said Great Republic, in and for the sum of ten thousand dollars, for the term of six months from the twenty-fourth day of December aforesaid, against such risks as your orators had assumed, and especially against loss from the perils of the seas and against loss from fire; that the said application so made by the said Storey was made at the office and usual place of business of the said Commercial Mutual Marine Insurance Company in Boston; that it was so made in the first instance to the secretary of the defendants, and immediately thereafter, and on the day last aforesaid, to George H. Folger, the president of the defendants, who was duly authorized to receive and act thereupon for the defendants.

Your orators further say, that upon the making of the said application, the said George H. Folger, after consulting and advising with some person then present, whose name is to your orators unknown, replied to the said Storey that the defendants would reinsure your orators, in the sum of ten thousand dollars, upon the said Great Republic, and would assume the risks proposed for the term of one year, at and for a premium of six per cent upon the sum to be underwritten; that they would insure against the said risks for the term of six months at and for a premium of three and one-half of one per cent upon the sum to be insured.

* 1899 * Your orators further say, that the said Storey, immediately thereafter the said application, communicated to your orators the terms upon which the said defendants would reinsure your orators upon the said great Republic.

Your orators further say, that on the said twenty-fourth day of December, your orators upon being advised by the said Storey as aforesaid, directed, authorized, and requested the said Storey, in the name and behalf of your orators, to accept the terms aforesaid, for six months, and to procure for your orators a reinsurance, in accordance therewith, from the twenty-fourth of December aforesaid.

Your orators further say, that the said Storey as agent, and in behalf of your orators, on Monday, the twenty-sixth day of the said December, at or about eleven o'clock before noon, at the place of business of the said defendants in Boston, and before any loss or damage had occurred to the said Great Republic, notified the said Folger that your orators had accepted the proposition of the defendants to reinsure your orators for the term of six months from the twenty-fourth of December aforesaid, at noon.

Your orators further say, that on the said twenty-sixth day of December, and before any loss or damage had occurred to said ship, the above-named Storey, in behalf of your orators, embodied in a paper partly printed and partly written, the terms of the contract of reinsurance, so as aforesaid, on the said twenty-fourth of December, in answer to the aforesaid application, proposed to your orators by the said defendants, and so as aforesaid accepted on the morning of the twenty-sixth of December.

Your orators further say, that the said paper was examined, approved, and retained by the said Folger, he in this behalf acting for the defendants, and by him was, in the name of the defendants, assented to, and thereupon a contract of reinsurance by and between the defendants and your orators was complete and concluded, upon the terms in said paper contained, by force whereof the defendants became and were liable and agreed to and with your orators to pay to them the sum of ten thousand dollars, in the event that the said ship Great Republic should be lost or damaged within six months from and after noon of the said twenty-fourth of December, by the perils of the seas or by fire.

Your orators further say, that the said Folger, in behalf of the defendants, and in their name and behalf, agreed with the said Storey, he acting for your orators, that a policy should be prepared and executed by the said defendants to your orators, at the early convenience of the defendants, and delivered to your orators, containing with other usual and accustomary clauses, the terms of the contract of reinsurance, so as aforesaid concluded by and between your orators and the defendants, and so as aforesaid embodied and set forth in the paper aforesaid.

* Your orators further say, that the said Storey, on the twenty-sixth day of December aforesaid, was authorized, ready, and willing in behalf of your orators to pay to the defendants, or secure to their satisfaction, at their election, the premium, so as aforesaid agreed upon, on the said reinsurance, but the same was not then paid, because the defendants were accustomed not to receive the premiums by them required in their contracts of insurance until the preparation and delivery of the policies by them agreed to be issued. * 1900

Your orators further say, that the said Storey, on the said twenty-sixth day of December, immediately upon the conclusion of the aforesaid contract of reinsurance, advised your orators of its completion.

Your orators further say, that the said Storey, on Tuesday, the twenty-seventh day of December aforesaid, notified the defendants that the said ship had been destroyed by fire and was totally lost, and at the same time asked Edmund R. Whitney, secretary at the time of the defendants, in the presence and hearing of the said Folger, at the office of the said defendants, if the policy had been prepared for your orators, to which the said Whitney, in the hearing of the said Folger, said no, assigning no reason for the delay, or intimating any refusal to execute such policy.

Your orators further say, that the said Storey, on Wednesday the twenty-eighth of December, called a second time at the office of the defendants and asked for the said policy, to which the said Folger replied, he was in doubt whether the contract was complete and obligatory, as it was made on a day regarded as Christmas-day, but he, the said Folger, had not made up his mind about it, and did not want to talk on the subject then.

Your orators further say, that one F. S. Lothrop, on the thirtieth of January, eighteen hundred and fifty-four, in behalf of your orators, made a draft upon the defendants for the sum of nine thousand six hundred and fifty dollars, the amount of said reinsurance, less the pre-

inium, payable at sight, to John S. Tappan, your orators' vice-president, which draft was thereafter, on the first day of February, eighteen hundred and fifty-four, presented to the defendants, which they refused to pay or accept.

Your orators further say, that the said Storey, in behalf and in the name of your orators, in that behalf duly authorized, on the twenty-sixth day of April, eighteen hundred and fifty-four, at the office of the defendants, made demand upon the aforesaid Folger, for the execution and delivery of the policy so as aforesaid by the said defendants theretofore agreed to be by them executed and to your orators to be delivered, and at the same time tendered to the said defendants the sum of three hundred and sixty dollars as and for premium, interest, and cost of policy, with which request the said Folger, in the name of the said defendants and in their behalf, refused to comply.

* 1901 * Your orators further say, that they have applied to the defendants for a copy of the aforesaid paper so left with them on the twenty-sixth of December, which they refused to furnish.

And your orators well hoped that the defendants would have complied with the reasonable requests of your orators.

To the end, therefore, that the said defendants may, if they can, show your orators should not have the relief hereby prayed, and may, according to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogations hereinafter numbered and set forth as by the note hereunder written they are required to answer, that is to say, —

1. Whether, upon your information and belief, &c.
2. Whether, &c.
3. Whether, &c.
&c., &c.

And your orators pray that the defendants may discover and produce the original paper or memorandum, so as aforesaid made by said Storey, and dated twenty-fourth of December, eighteen hundred and fifty-three, which was so as aforesaid left with their president at their place of business on the aforesaid twenty-sixth of December.

And that the said agreement of the defendants to execute and deliver to your orators a policy of reinsurance, according to the terms of the aforesaid paper, and in accordance with the defendants' contract of insurance as aforesaid, may be specifically performed, your orators hereby undertaking to perform their undertakings in the premises.

And that the said defendants may be decreed to pay to your orators the sum of ten thousand dollars, the sum so as aforesaid by them reinsured to your orators, with interest thereon. And that your orators shall have such other and further relief as the case may require and as shall seem meet to the Court, and as shall be agreeable to equity and good conscience.

And your orators pray this honorable Court to issue a writ of *subpœna* in due form of law according to the rules of this Court, to be directed to the Commercial Mutual Marine Insurance Company, a corporation

by the law of Massachusetts, at Boston, commanding them on a certain day and under a certain penalty to be and appear before this honorable Court, and to stand to, abide, and perform such order and decree therein as to this Court shall seem meet, and as shall be agreeable to equity and good conscience.

**The Union Mutual Insurance Company of New York,
by C. B. G., their attorney.**

C. B. G., *counsel.*

- * 10. A comprehensive form of a bill by a person entitled to the specific performance of a contract for the sale or purchase of real or personal estate seeking such specific performance.¹

SUPREME JUDICIAL COURT.

ESSEX, SS.

In Equity.

JOHN LEE Plaintiff.
HENRY JONES : : : : : Defendant.

Bill of Complaint.

To the Honorable, &c.

John Lee, of Lynn, in said county of Essex, merchant, the above-named plaintiff, brings this his bill of complaint against Henry Jones, of Salem, in said county, Esquire, the above-named defendant, and there-upon complains and shows as follows:—

1. That the said Henry Jones, by an agreement in writing, dated on the — day of —, by him subscribed [or signed], a copy of which is annexed to this bill, marked —, agreed to purchase of the said John Lee, the plaintiff [or sell to him], a certain farm [or messuage, or parcel of real estate] situate in —, and bounded and described as follows: [*here give the description and boundaries*] [or one hundred shares in the capital stock of the Eastern Railroad Corporation], in the said agreement referred to, for the sum of \$—.

2. The plaintiff has always been ready, and has offered and now offers specifically to perform the said agreement on his part.

3. The plaintiff has made or caused to be made an application to the said Henry Jones, specifically to perform the said agreement on his part, but said Jones has not done so.

The plaintiff therefore prays as follows :—

1. That this Court will declare that the plaintiff is entitled to a specific performance and execution of the said agreement, and will decree the same accordingly.

2. That this Court will decree to the plaintiff his costs of this suit.

¹ That a Court of Equity has authority to decree a specific performance of a contract to transfer shares in corporations, see *Todd v. Taft*, 7 Allen, 371; *Leach v. Fobes, supra*; *Cheale v. Keuward*, 3 De G. & J. 27; *Clark*

v. Flint, 22 Pick. 231. But not where its aid is sought to carry into effect an unconscionable bargain. Mississippi & Mo. R. Co. *v.* Cromwell, 91 U. S. 643.

3. That the plaintiff may have such further and other relief as the nature of his case requires.

4. That for the purposes aforesaid, all proper inquiries may be made, accounts taken, and directions given.

5. That a writ of *subpoena* may issue out of this Court, directed to the said Henry Jones, commanding him to be and appear before this Court [to be holden in and for the county of Essex aforesaid], on a day and under a pain therein specified, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to this Court shall seem meet.

Bill relating to the Estate of a Married Woman.

11. *Bill to enforce payment, out of a married woman's separate property, of a bond given by her for the price of land conveyed to her for her sole and separate use.¹*

To the Honorable the Justices of the Supreme Judicial Court, &c.

Humbly complaining, sheweth unto your honors A. G. R., of the city and State of New York, that C. M. W., of B., in the county of S., and Commonwealth of Massachusetts, married woman, wife of J. W. W., did, as the plaintiff is informed and believes, on or about the — day of —, A. D. 1855, purchase in her own name and in her own right, an estate of land and buildings, situated in the town of J., in the county of Q., and State of N. Y., of one I. H., then of said town of J.; which said estate consisted of several parcels or pieces of land, as will more fully appear by the deed thereof from said I. H. to the said C. M. W.; a certified copy whereof, from the registry where the same is recorded, the plaintiff craves leave to produce at the hearing of this case.

And the plaintiff further shows that he is informed and believes that the consideration or price of said estate, purchased by the said C. M. W. as aforesaid, was not less than eighteen thousand dollars, which the said C. M. W. paid, or agreed to pay; and that, as a part of said price or consideration, the said C. M. W. assumed and agreed to pay a mortgage for six thousand dollars on said estate, made by the said I. H. to M. S. and H. S., dated on or about the — day of —, 1854; and that, further, for a portion of said price, or consideration of said purchase, the said C. M. W., together with her husband, the said J. W. W., made and executed to the said I. H. a bond for the sum of six thousand dollars, under seal (a copy whereof is hereto annexed, marked

¹ Rogers v. Ward, 8 Allen, 387. Where a married woman contracts a debt which she can only satisfy out of her separate estate, her separate estate will, in Equity, be made liable

to the debt. Picard v. Hine, L. R. 5 Ch. 274; see Johnson v. Gallagher, 3 De G. F. & J. 494; Johnson v. Vail, 14 N. J. Eq. 423.

"A"), and that, to secure the payment of said bond, the said C. M. W., together with her said husband, executed and delivered to the said I. H. a mortgage on said estate before mentioned; which said mortgage, or a certified copy thereof, the plaintiff craves leave to produce in Court at the hearing of this cause.

And the plaintiff further shows, that, on or about the — day of —, 1859, he purchased, for a valuable consideration, of the said I. H., the bonds before mentioned, given by the said C. M. W. and her * said husband to the said I. H., together with the said mortgage * 1904 given as aforesaid to secure the payment of the same; which were assigned to the plaintiff by the said I. H., by an assignment in writing duly executed, and delivered by the said I. H. to your orator on or about said — day of —, 1859; and the plaintiff became thereby the owner of said bond and mortgage, and the debt and money due from said C. M. W. to the said I. H., and ever since has and still does continue to own and hold the same.

And the plaintiff further shows, that no part of the principal sum, or the interest thereon, of said bond (or of the debt due from the said C. M. W., as aforesaid) has been paid since the same was assigned to him; and he is informed and believes that no part of the principal sum of said bond had been paid before the same was assigned to him; but he is informed that the interest due thereon had been paid up to April, 1857; and there is now due to the plaintiff, as he believes, the whole of the principal sum of six thousand dollars on said bond, and the interest thereon, at the rate of six per cent per annum, from April, 1857, to the present time.

And the plaintiff further shows, that he is informed and believes that the said C. M. W. has not paid said first-mentioned mortgage made by said I. H. to M. S. and H. S., neither the interest nor the principal thereof; but, in consequence of her not paying the same as she had assumed and agreed to do, the holders or holder of said mortgage have foreclosed the same, in the manner and form required by the laws of the State of N. Y.; and, under and in pursuance of such foreclosure, said estate has been sold at sheriff's sale to pay said mortgage; and, as the plaintiff is informed and believes, said estate did not bring at said sale above the sum of seven thousand dollars, which, as the plaintiff is informed and believes, was not enough to pay the amount due on said first-mentioned mortgage.

And the plaintiff further shows, that he is informed and believes that the said C. M. W., together with her said husband, has, since the date of said bond and mortgage given by her to the said I. H., and by him assigned to the plaintiff, sold and conveyed said estate to one W. for a large sum or price, the particulars of which are unknown to your orator.

And the plaintiff further shows, that the said estate was conveyed to the said C. M. W., as her sole and separate property, and that she was possessed of it as such; and that, as the plaintiff is informed, she has other sole and separate property, either in her own name or in the name or in the hands of some person as trustee; and that such property,

either in her own name or in the hands of her trustee, ought to be and is holden for and chargeable with the payment of the amount of said bond, and the interest due thereon; and the plaintiff ought to receive and recover the same from the said C. M. W.'s estate.

* 1905 * But now, so it is, may it please your honors, that the said C. M. W. and the said J. W. W., although often requested to pay to the plaintiff the amount due to him upon said bond and mortgage, utterly and wholly refuse and neglect to comply with such request, or to pay to the plaintiff the same, or any portion thereof; all of which is contrary to equity and good conscience, and tends to the manifest injury of the plaintiff.

In consideration whereof, and forasmuch as the plaintiff is entirely remediless in the premises, according to the strict rules of the Common Law, and can only have relief in a Court of Equity, where matters of this nature are properly recognizable and relievable; to the end, therefore, that the said C. M. W., upon her corporal oath, may full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated and she thereunto distinctly interrogated, and that according to the best of her knowledge, information, and belief: —

And that your honors would order and find the amount due to the plaintiff upon said bond and mortgage, and decree that the same may be paid to the plaintiff out of the separate property of the said C. M. W., standing either in her own name, or in the hands of a trustee; and that the plaintiff may have such other and further relief in the premises as the nature of his case shall require, and to your honors shall seem meet: —

May it please your honors to grant unto the plaintiff a writ of *subpoena*, issuing out of this honorable Court, to be directed to the said C. M. W., thereby commanding her, under a certain penalty therein to be specified, to be and appear personally before your honors at a certain day, then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet: and the plaintiff shall ever pray.

A. G. R.

SECTION III.

Bill relating to Dower.

12. *Bill for Dower to set aside release made thereof for Fraud and Imposition in the United States Circuit Court.¹*

Humbly complaining, show unto this Honorable Court, your orator, Ellick P., of Cincinnati, in the State of Ohio, Esq., and a citizen of the said State of Ohio, and your oratrix, Elizabeth P., now the wife of the said Ellick P., of said Cincinnati, and a citizen of the said State

¹ Powell v. Monson &c. Manuf. Co. 3 Mason, 347.

of * Ohio, gentlewoman, that the said Elizabeth, who was the * 1906 widow of R. M., late of M., in the said Commonwealth of Massachusetts, deceased, intestate, wherein the said Ellick and Elizabeth demand against the Monson and Brimfield Manufacturing Company, duly and legally incorporated by that name within the said Commonwealth of Massachusetts, the reasonable or just third part whereof the said Elizabeth is by law dowable according to the true intendment of law, of, and in the following described lands or tenements bounded and described as follows, to wit: [*Description and boundaries.*]

Whereupon your said orator and oratrix complain and say that the said R. M., formerly the husband of your said oratrix, was seised in his demesne as of fee of the aforesaid described lands and tenements during the coverture of the said R. M., with her, your said oratrix, and while she was his wife and was actually in possession thereof.

And your said orator and oratrix further say, that they at said M., on the 3d day of March, A. D. 1823, did make demand and require of the said Monson and Brimfield Manufacturing Company, who then did and now do claim a right of freehold and inheritance in the before described premises, to assign and set out to her, your said oratrix, her dower or just third part of and in the aforesaid premises.

And your orator and oratrix further say, that since the time of making said demand as aforesaid more than one month hath elapsed, and that the said Monson and Brimfield Manufacturing Company did not within one month next after said demand being made as aforesaid, assign and set out to your oratrix her dower, or any part thereof in the aforesaid premises, and that the said Monson and Brimfield Manufacturing Company, or either of the members thereof, have not done, or caused the same to be done, at any time since, but on the contrary, they then refused and still refuse so to do.

But now so it is, may it please your honors, that the said Monson and Brimfield Manufacturing Company, being in no wise ignorant of the premises, but contriving and confederating with each other, and with several other persons to your orator and oratrix yet unknown, in order to wrong and injure your said orator and oratrix, and to prevent your oratrix from having her dower or just third part of and in the aforesaid premises assigned and set out to her according to the true intendment of law.

Your orator and oratrix give your honors to be informed that the said confederates pretend and give out that the said oratrix, during her coverture, and while she was the wife of the said R. M., did sign, seal, and deliver some deed, or other instrument in writing whereby she acquitted, released, and discharged all her right of dower in the aforesaid described premises.

Now your orator and oratrix charge the contrary thereof to be true, and, moreover, that the said oratrix never did make any such release * or discharge to them, the said Monson and Brimfield * 1907 Manufacturing Company, as hereinbefore pretended, or if she did give or execute the same, she was grossly deceived and imposed upon in relation thereto, and that the same was obtained from her, or she was

prevailed upon to execute the same by unfair means or practices used in that behalf by the said confederates.

And your orator and oratrix further charge and complain that the said pretended release or instrument was procured and brought to the said oratrix, ready drawn and prepared for execution, and that she would not have signed or executed the same, in case she had known or been fully apprised of the real purport, tenor, or contents thereof, nor was any sum or sums of money whatever paid to or received by her, as the consideration for her executing the said pretended release or instrument. Under the circumstances aforesaid, your said orator and oratrix insist that the said pretended release or instrument ought to be delivered up to be cancelled, as having been fraudulently and unfairly, and without consideration, obtained from the said oratrix.

But nevertheless the said confederates insist upon the contrary, and claim the full benefit of the said pretended release or instrument, and threaten and intend, in case your orator and oratrix proceed at law against them touching the matters aforesaid, to set up the pretended release or instrument in bar thereto.

And also, your orator and oratrix here before your honors insist that the said pretended deed or instrument, in manner and form as the same was signed, sealed, and delivered, was not a discharge or relinquishment of dower of your oratrix in the premises therein referred to, and that the same by the laws of the land, does not bar or exclude her from such dower or right in the within described lands or tenements.

And your orator and oratrix further complain, and give your honors to be informed, that the said confederates pretend that your oratrix, during the lifetime of her late husband, R. M., and while she was his wife as aforesaid, did join with her said husband in the several deeds of sale and conveyance by him made, of the said several pieces of land as hereinbefore described, and that your oratrix, by such joining in the aforesaid deeds of sale and conveyance, has lawfully barred or excluded herself from such dower or right. Now your orator and oratrix on the contrary charge and say, that your oratrix did not join with her said husband, R. M., in any deed of sale or conveyance of the before described premises, as they pretend, and that she is not, by the laws of the land, barred or excluded from her said dower or right in or to the within described lands or tenements.

In consideration of all which, and inasmuch as your orator and oratrix cannot have relief in the premises by the plain, direct, and ordinary course of the Common Law, to the end, therefore, that the said Monson

and Brimfield Manufacturing Company, and the rest of the con-

* 1908 federates, * when discovered, may be holden to account with, or

assign and set out to, your orator her dower or just third part in or to the within described premises, your orator and oratrix humbly pray that W. P., E. T. A., J. H., S. W., Jr., G. B., B. S., S. C., and G. T., all of B., in the said District of Massachusetts, gentlemen, W. B., of C., in the said District, gentleman, and J. H., Jr., of M., in said District, gentleman, all being proprietors and constituting the Monson and Brimfield Manufacturing Company, and citizens of the said State of Massa-

chusetts; and such other confederates, when discovered, may be called and required severally to answer on oath, fully and particularly, all and singular, the matters herein set forth.

Wherefore, may it please your honors, &c.

G. B.

[*Prayer for subpoena.*]

SECTION IV.

Bills respecting the Foreclosure of Mortgages.

13. *Bill by mortgagee against the mortgagor, for a foreclosure.*

Humbly complaining, shows unto your honors the plaintiff, R. S., of, &c., that on the, &c., P. J., of, &c. [one of the defendants hereinafter named], being, or pretending to be, seised in a fee of a certain parcel of real estate, situate, &c., and bounded, &c., and having occasion for the loan of a sum of money, applied to the plaintiff to lend him the sum of \$—, and in order to secure the repayment of the same, with interest, proposed to mortgage to the plaintiff the said real estate. And the plaintiff further shows unto your honors that the plaintiff did comply with the request of the said P. J., and did accordingly lend him the said sum of \$—, and for securing the repayment thereof, with interest as aforesaid, by deed, bearing date on, &c., and made and executed by the said P. J., did grant, bargain, sell, and convey unto the plaintiff the premises above described: To have and to hold unto the plaintiff, his heirs and assigns, in fee-simple for ever, subject nevertheless to a proviso for the redemption of the said premises, on payment by the said P. J., his executors, administrators, or assigns, to the plaintiff, his executors, administrators, or assigns, of the said sum of \$—, with lawful interest for the same, within one year from the date of said deed, as by the said deed, reference thereunto being had, will more fully appear. And the plaintiff further shows, that the said sum of \$—, or any part thereof, was not paid to the plaintiff or to any person on his behalf,

* according to the said proviso in said deed at the time therein mentioned, and has not now been paid to the plaintiff, but is still due and owing to him, together with a great arrear of interest thereon. And the plaintiff well hoped that the said P. J. would either have paid the plaintiff the said sum of \$—, and the interest thereon, or would have suffered the plaintiff to have peaceably and quietly held and enjoyed the said premises, and for that purpose the plaintiff has frequently applied to the said P. J., and requested him to pay the said sum of \$—, and the interest due upon the same, or else peaceably to deliver up possession to the plaintiff of the said mortgaged premises, together with all deeds, evidences, writings, &c., relating to or concerning the same, and to release all his right, title, and equity of redemption of, in, and to the said premises, to the plaintiff and his heirs, the said P. J. well knowing, as the plaintiff charges the truth to be, that the said premises are a very

:scanty security for the principal and interest now due to the plaintiff thereon. And the plaintiff well hoped that the said P. J. would have complied with such, the plaintiff's reasonable requests, as in justice and equity he ought to have done. BUT now so IT IS, &c. [See form No. 34, p. 1882.] And the said defendant, P. J., pretends that the said premises were mortgaged by him to, &c., whereas the plaintiff charges that, &c. And at other times the said P. J. pretends, &c., whereas the plaintiff charges, &c. All which actings, &c. [See form No. 36, p. 1883.] And that the said P. J. may discover whether there is or are any other, and what incumbrance or incumbrances upon or affecting the said mortgaged premises, or if so, in whom the same is or are vested. And that an account may be taken, by and under the direction and decree of this honorable Court, of what is due and owing to the plaintiff for principal and interest moneys upon and by virtue of his said recited mortgaged securities, and that the said P. J. may be decreed to pay and satisfy to the plaintiff what shall appear to be due and owing to him on the taking of the aforesaid account, by a short day to be appointed by this honorable Court, together with the plaintiff's costs. And in default thereof, that the said P. J., and all persons claiming under him, may be absolutely barred and foreclosed of and from all equity of redemption or claim, in and to the said mortgaged premises, and every part thereof, and may deliver over to the plaintiff all deeds, writings, and documents whatsoever in his custody, possession, or power, relating to or concerning the said premises and every part thereof, &c. [And for further relief, see form No. 38, p. 1885.] May it please, &c. [See form No. 43, p. 1887.]

* 1910 * 14. *Bill by a mortgagee for a foreclosure, against the surviving mortgagor, entitled as surviving devisee to the Equity of Redemption, as to one moiety for his own benefit, and as to the other in trust for himself and another individual (also a defendant) as devisees under another will.*

Humbly complaining, shows unto your honors, the plaintiff, A. H., of, &c., Esq., against S. M. C., of, &c., and G. R., of, &c., that J. S. C. now deceased, the said S. M. C., and the Reverend P. K., now deceased, being or alleging themselves to be seised of, and entitled to, the premises hereinafter particularly described, in trust for the benefit of the said J. S. C. and S. M. C., and having occasion to borrow the sum of \$5500, applied to and requested the plaintiff to lend them the sum of \$3000, part of such sum of \$5500, on the security hereinafter mentioned, and that the plaintiff complied with such request, and did accordingly lend and advance the sum of \$3000 to the said J. S. C., S. M. C., and P. K. And that, thereupon, and in order to secure the repayment thereof with interest, the said J. S. C., S. M. C., and P. K. duly executed a certain indenture of mortgage bearing date, — and made or expressed to be made between the said J. S. C., S. M. C., and P. K. of the one part, and the plaintiff of the other part. And that thereby, after reciting as therein mentioned, it was witnessed that for

and in consideration of the said sum of \$3000, to the said J. S. C., S. M. C., and P. K. paid by the plaintiff, the receipt whereof they did thereby acknowledge, they, the said J. S. C., S. M. C., and P. K., and each of them, did grant, bargain, sell, and convey unto the plaintiff, his heirs and assigns, all that capital messuage, &c., together with all and every the appurtenances, &c., to hold the said messuage, &c., unto the plaintiff, his heirs, and assigns in fee-simple forever, but subject to a proviso for redemption upon payment by the said J. S. C., S. M. C., and P. K., their heirs, executors, administrators, or assigns, unto the plaintiff, his executors, administrators, or assigns, of the said sum of \$3000, with interest after the rate of 5 per cent per annum at or upon the — day of — then next ensuing; as in and by the said indenture, reference being thereto had, will more fully appear. And the plaintiff further shows unto your honors, that the said sum of \$3000 was not paid to the plaintiff at the time, for that purpose limited by the said indenture, for the payment of the same, and that thereby the estate of the plaintiff in the said mortgaged premises became absolute at law. And the plaintiff further showeth unto your honors, that in or about the year — the said J. S. C. died, having first made his will bearing date —, whereby he devised all real estate, including his interest in the said mortgaged premises, to the said S. M. C. and P. K. and to G. R. of —, and their heirs. And the plaintiff further shows unto your honors that the said P. K. had no beneficial interest in the said mortgaged premises; and that he died some time since, leaving * the said S. M. C. him surviving; and that the said S. M. C. alone *1911 now entitled to the equity of redemption of the mortgaged premises in trust, as to one moiety thereof, for his own use and benefit, and in trust, as to the other moiety, for the use and benefit of himself and the said G. R., as devisees of the said J. S. C. And the plaintiff further shows that the said sum of \$3000, together with a considerable arrear of interest accrued due thereon, is now due to the plaintiff on the security of the said premises. And that the plaintiff has frequently, and in a friendly manner, applied to the said S. M. C., and requested him to pay the same and release his equity of redemption of and in the said mortgaged premises. And the plaintiff well hoped that such his just and reasonable requests would have been complied with, as in justice and equity they ought to have been. BUT NOW SO IT IS, may it please your honors, that the said S. M. C., combining with the said G. R., and contriving how to injure the plaintiff in the premises, refuses so to do, although your orator charges that the plaintiff did as aforesaid well and truly advance and pay the said sum of \$3000, to the said J. S. C., S. M. C., and P. K., and that for securing the repayment thereof with interest, the said J. S. C., S. M. C., and P. K. duly made and executed to the plaintiff such indenture as is hereinbefore mentioned; and that the whole of the said sum of \$3000, together with a large arrear of interest accrued due thereon, is now justly due and owing to the plaintiff on the security aforesaid. And the plaintiff charges that the mortgaged premises are a very scant security for the repayment of what is due and owing to the plaintiff on the security thereof. And the plaintiff charges

that the said G. R. is and claims to be interested in the said mortgaged premises, or some part thereof, and to be entitled to redeem the same, but he, and also the said S. M. C. refuses so to do. And the plaintiff charges that the said defendants ought either to pay what is due to plaintiff as aforesaid, or otherwise to release their equity of redemption in the said premises, but they refuse so to do. All which actings, &c. [See form No. 36, p. 1883.] And that the said defendants may answer the premises; and that an account may be taken by and under the direction and decree of this honorable Court of what is due and owing to the plaintiff for principal money and interest on the security of the said mortgaged premises; and that the said defendants may be decreed to pay unto the plaintiff what shall appear to be justly due and owing to him on the taking of the aforesaid account, together with his costs of this suit, by a short day to be appointed by this Court for that purpose, the plaintiff being ready and willing, and hereby offering, on being paid his principal money and interest and costs, at such appointed time, to reconvey the said mortgaged premises unto the said defendants, or unto either of them, as this honorable Court shall direct. And in default of such payment, that the said defendants and all persons claiming under them, may be absolutely barred and foreclosed of *and from all right and equity of redemption in and to the said mortgaged premises and every part thereof forever. And may deliver up to the plaintiff all and every the deeds, writings, and documents in their or either of their possession, custody, or power, relating to the said mortgaged premises and every part thereof. [And for further relief, see form No. 38, p. 1888.] May it please your honors, &c. [See form No. 43, p. 1887.] [Pray subpoena against S. M. C. and G. R.]

15. Prayer in a bill for foreclosure and sale.

That an account may be taken, by or under the direction of this honorable Court, of what is due for the principal and interest on the said mortgage, and that the said defendants, or some one of them, may pay unto the plaintiff the money which shall be found due to him by a short day, to be appointed for that purpose by this honorable Court; or, in default thereof, that all the said defendants, and their respective heirs, executors, and administrators, and all other persons claiming, or to claim by, from, or under them, or any of them, may be absolutely barred and foreclosed of and from all right and equity of redemption of, in, and to the said estates and every part thereof; or, if on any account the plaintiff is not entitled to such foreclosure, then that the said estates may be sold, and all proper parties may join therein, and that the money so due to the plaintiff may be paid to him by and out of the money which shall be raised by such sale, &c., &c.

16. English model form of bill in foreclosure suit, as given in schedule to the orders of 7th August, 1852.

In Chancery.

JOHN LEE JOHN STYLES } and HENRY JONES }	Plaintiff. Defendants.
---	---

Bill of Complaint.

To the Right Honorable Richard, Baron Westbury, of Westbury, in the County of Wilts, Lord High Chancellor of Great Britain.

Humbly complaining, sheweth unto his Lordship, J. L., of, &c., the above-named plaintiff, as follows:—

1. The defendant, J. S., being seised in fee-simple of a farm called Blackacre, in the parish of A., in the county of B., with the appurtenances, did, by an indenture dated, &c., and made between the defendant J. S., of the one part, and the plaintiff of the other part, grant and convey the said farm, with the appurtenances, unto and to the use of the plaintiff, his heirs and assigns, subject to a proviso for redemption *thereof, in case the defendant, J. S., his *1913 heirs, executors, administrators, or assigns, should, on the first day of May, one thousand eight hundred and fifty-one, pay to the plaintiff, his executors, administrators, or assigns, the sum of five thousand pounds, with interest thereon at the rate of 5 per centum per annum, as by the said indenture will appear.

2. The whole of said five thousand pounds, together with interest at the rate aforesaid, is now due to the plaintiff.

3. The defendant H. J. claims to have some charge upon the farm and premises comprised in the said indenture of, &c., which charge is subsequent to the plaintiff's said mortgage.

4. The plaintiff has frequently applied to the defendants J. S. and H. J., and required them either to pay the said debt or else to release the equity of redemption of the premises, but they have refused so to do.

5. The defendants J. S. and H. J. pretend that there are some other mortgages, charges, or incumbrances affecting the premises, but they refuse to discover the particulars thereof.

6. There are divers valuable oak, elm, and other timber-like trees growing and standing on the farm and lands comprised in the said indenture of mortgage, which trees and timber are a material part of the plaintiff's security; and if the same or any of them were felled and taken away, the said mortgaged premises would be an insufficient security to the plaintiff for the money due thereon.

7. That the defendant J. S., who is in possession of the said farm, has marked for felling a large quantity of the said oak and elm trees, and other timber, and he has, by handbills, published on the second

December instant, announced the same for sale, and he threatens and intends forthwith to cut down and dispose of a considerable quantity of the said trees and timber on the said farm.

Prayer.

The plaintiff prays as follows:—

1. That an account may be taken of what is due for principal and interest on the said mortgage.

2. That the defendants J. S. and H. J. may be decreed to pay to the plaintiff the amount which shall be so found due, together with his costs of this suit, by a short day to be appointed for that purpose, or, in default thereof, that the defendants J. S. and H. J., and all persons claiming under them, may be absolutely foreclosed of all right and equity of redemption in or to the said mortgaged premises.

3. That the defendant J. S. may be restrained by the injunction of this honorable Court from felling, cutting, or disposing of any of the timber or timber-like trees now standing or growing in or upon the said farm and premises comprised in the said indenture of mortgage, or any part thereof.

* 1914 * 4. That the plaintiff may have such further or other relief as the nature of the case may require.

Names of the defendants.

The defendants to this bill of complaint are,

J. S.

H. J.

[*Name of Counsel.*]

NOTE.—This bill is filed by Messrs. A. B. and C. D., of Lincoln's Inn, in the county of Middlesex, solicitors to the above-named plaintiff.

Indorsement on Bill.

In Chancery.

Master of the Rolls,

[or Lord Chancellor.

Vice-Chancellor.]

Lee v. Styles and Jones [and others.]

Bill of Complaint.

VICTORIA R.

To the within named defendants — greeting:

We command you and every of you, that within — days after service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in our High Court of Chancery to the within bill of complaint of the within named —, and that you observe what our said Court shall direct. Witness ourself at Westminster, the — day of January, in the — year of our reign.

NOTE.—If you fail to comply with the above directions, you will be liable to be arrested and imprisoned.

Appearances are to be entered at the Record and Writ Clerks' office, Chancery Lane, London.

A. B. and C. D.

(Place of Address),

Plaintiff's Solicitors.

17. Bill by an equitable mortgagee, by deposit, for foreclosure on sale.

Title and address of bill.

Humbly complaining, &c., D. J., of, &c., the above-named plaintiff, as follows:—

1. On or about the 12th of May, 1851, the defendant M. R., then of, &c., applied to the plaintiff, for a loan of £150; which the plaintiff agreed to advance, as to £100 forthwith, and as to the remaining £50 when the defendant should apply for the same; and it was agreed that * the defendant should give his promissory note for the said * 1915 sum and interest, as hereinafter mentioned; and should deposit the title deeds hereinafter mentioned, as a further security for such loan.

2. The plaintiff accordingly lent and advanced to the defendant the sum of £100 on the said 12th of May, 1851; and the defendant signed and delivered to the plaintiff his promissory note in the words and figures following: [Promissory note set out.]

3. At the same time the defendant deposited with the plaintiff the title deeds relating to a messuage, with the buildings, garden, and appurtenances thereto belonging, situated in the parish of E., in the county of S., commonly called or known by the name of Little Yard; which had been conveyed to the defendant in fee-simple, to the usual uses to bar dower; but no memorandum of such deposit was then, or has since been, given to the plaintiff.

4. On or about the 4th of June, 1851, the defendant applied to the plaintiff to advance him the further sum of £50, in accordance with the agreement hereinbefore stated; and accordingly the plaintiff advanced the defendant the said sum of £50 on the said 4th of June, 1851; and the defendant signed and delivered to the plaintiff a promissory note in the words and figures following: [Promissory note set out.]

5. In or about the month of June, 1852, the defendant applied to the plaintiff to advance him the further sum of £60 for a week, under special circumstances, in order to save him the expense of a journey to London; and the defendant agreed to repay the plaintiff the said sum of £60 in a week's time, and also £5 for the accommodation. The plaintiff accordingly advanced and paid the said sum of £60, to the defendant; who, at the same time, gave him an unstamped memorandum in the words and figures following: [Memorandum set out.]

6. The defendant made default in payment of the said sum of £60 and interest; and in the month of July or August, 1852, the plaintiff had an interview with the defendant, and there proposed that the de-

fendant should execute to him a legal mortgage of the said freehold premises, of which the title deeds had been so deposited as aforesaid, together with certain leasehold property at C., which the defendant then stated he had recently agreed to purchase; to secure the said several loans and interest thereon, at the rate of five per cent per annum; to which proposal the defendant agreed; but such mortgage was never completed.

7. The whole of the three several sums of £100, £50, and £60, amounting together to the sum of £210, together with interest thereon, still remains due from the defendant to the plaintiff.

8. The defendant subsequently became involved in pecuniary difficulties; and on or about the 18th of October, 1852, he left his home, and has not since been seen or heard of; although repeated and diligent inquiries have been made for him.

* 1916

* *Prayer.*

The plaintiff prays as follows: —

1. That an account may be taken of what is due to the plaintiff on security of the said deposit of deeds: and that the defendant may be decreed to pay to the plaintiff what shall, on taking the said account, be found due to him, together with the costs of this suit; by a short day to be appointed for that purpose; and in default of such payment, that the defendant may be forever barred and foreclosed of all right and equity of redemption in the said hereditaments at E. aforesaid; and that the said hereditaments and the legal estate therein may be conveyed to the plaintiff: or otherwise that the same may be sold; and that the produce of such sale may be applied to the satisfaction of what shall be found due to the plaintiff; and for the above purposes that all necessary directions may be given.

2. That some proper person may be appointed by the order of this honorable Court to receive the rents and profits of the said hereditaments.

3. That the plaintiff may have such further or other relief as the nature of the case may require.

18. *Bill by executors of mortgagee, for specific performance of agreement to take a transfer; or for foreclosure or sale.*

(*Title and address of bill.*)

Humbly complaining, &c., T. M., of, &c., W. S., of &c., and J. C. of, &c., the above-named plaintiffs, as follows: —

1. On the 7th day of May, 1852, G. C., late of R., deceased, lent and advanced to the defendant E. V. the sum of \$3000 on the security hereinafter stated.

2. For securing the said sum of \$3000 and interest the defendant E. V. signed and delivered to the said G. C. the following agreement:

[Articles of agreement set out verbatim, by which, after reciting the deposit of a lease, a policy of insurance, and gas shares, with G. C., E. V. declared that they were deposited as a security for \$3000, and interest at 5 per cent; and E. V. charged the leasehold property, the policy, and gas shares, and also a certain rent charge to which he was entitled in reversion, with the payment of the money and interest, and E. V. agreed, when required to execute a mortgage and transfer of the said premises, shares, policy of insurance, and rent charge; with power of sale, and such other clauses as G. C. should require.] The defendant E. V. at the same time deposited with the said G. C. the several documents mentioned in the said agreement.

3. The said G. C. died in the month of April, 1853, having first duly made and published his last will and testament in writing, and thereby appointed the plaintiffs executors; who, after his death, proved the same in the appropriate Court. * 1917

4. The said sum of \$3000 is still due and owing on the said security, with interest thereon.

5. The defendant T. E., by letters signed by him, agreed with the plaintiffs, that if they would postpone giving notice of the said agreement to the tenants of the said property, and to the said gas and insurance offices, he would take a transfer of the said security. The plaintiffs accordingly, relying on such agreement, forbore to give such notice; but the defendant T. E. now refuses to perform his said agreement. The defendant T. E. acted in the said matter in concert with the defendant E. V., for the purpose of delaying the plaintiffs' proceedings against him, and enabling him to dispose of portions of his property; and the defendant E. V. has accordingly realized portions of his property, and placed the same out of the hands of his creditors.

Prayer.

The plaintiffs pray as follows:—

1. That an account may be taken of the amount due and owing on the said security.
2. That the said agreement with the defendant T. E. may be specifically performed; and the defendant T. E. may be decreed to pay to the plaintiffs the amount due on their said security, with the costs of this suit; the plaintiffs being willing, and hereby offering, on such payment to transfer to him the said security; or otherwise that the amount so due, together with the costs of this suit, may be paid to the plaintiffs by the defendant E. V., by a short day to be appointed for that purpose; and that, in default of such payment, the defendant E. V., and all persons claiming under him, may be debarred and foreclosed of and from all right and equity of redemption in the said mortgaged premises; and may be decreed to convey and transfer the same to the plaintiffs; or otherwise that the said mortgaged premises may be sold, and the proceeds thereof applied in payment of the amount due on the said security, and the plaintiffs' costs of this suit.

3. That some proper person may be appointed, under the order and direction of this honorable Court, to collect, receive, and get in the rents and profits of the said leasehold premises, and the dividends of the said shares, and the said rent charge, when the same shall become payable.

4. That the plaintiff may have such further or other relief as the nature of the case may require.

* 1918 * 19. *Form of Bill for Foreclosure, prescribed in the Chancery Rules of New Hampshire.*

To THE SUPREME JUDICIAL COURT.

HILLSBOROUGH, ss.

T. B., of, &c., complains against T. D., of, &c., T. M., of, &c., and T. A., of, &c., and says that on the — day of — he loaned to said T. D. the sum of \$1000, at his request, to be repaid to him in one year, with interest, and, for the purpose of securing the payment thereof, the said T. D. made, executed, and delivered to the plaintiff his promissory note of that date, whereby, for value received, he promised to pay to him or to his order \$1000 in one year, with interest, and a deed of mortgage of that date of a certain tract of land, situate in —, bounded, &c., containing, &c., with condition that if said T. D., his heirs, executors, or administrators should pay to said plaintiff the sum of \$1000, and interest, in one year, agreeably to his promissory note of even date therewith, the said deed should be void, as by said deed, duly executed, acknowledged, and recorded, ready in Court to be produced, appears: and afterwards, said T. D. mortgaged the same premises to said T. M., to secure to him a certain debt then due and owing to him, and afterwards released the same premises to the said T. A., who is now in possession of the same; and though the said defendants have been often requested to pay said sum of \$1000, and interest, since the same became due, yet the same has never been paid, and is still due. Wherefore the plaintiff prays that it may be ordered and decreed by said Court, that, unless the said sum of \$1000 and interest shall be paid by said defendants, or one of them, within such reasonable time as the Court may appoint, they, and each of them, may be forever foreclosed from all right of redeeming said premises, and for such other relief as may be just.

T. P.

A. S., *Solicitor.*

SECTION V.

Bills respecting the Redemption of Mortgages.¹

20. *Bill by the heir-at-law of the Mortgagors for the redemption of Free-hold Lands.*

To, &c.

Humbly complaining, showeth unto your honors, the plaintiff, J. G., of, &c., that J. G., the elder, late of, &c., but now deceased, and

¹ For bill to redeem lands sold under a power of sale contained in a mortgage deed, alleging tender of money due, and defects in the proceedings for a sale, see *Burnet v. Den-*

E. his * wife, now also deceased, the late father and mother of the * 1919 plaintiff, were in the right of the said E., seised in fee-simple of, or otherwise well entitled to, two parcels of real estate, bounded and described as follows: [*here insert boundaries, &c.*] And the plaintiff further showeth, that the said J. G. the elder, and E., his wife, in or about the year —, made some conveyance and assignment of the said premises unto W. B., of, &c., the defendant hereinafter named, by way of mortgage for securing the repayment of a certain sum of money, with interest, then advanced to the said J. G. by W. B., or by J. B., then of, &c., on the part of, and as the agent of, the said W. B.

And the plaintiff further showeth unto your honors, that the said W. B., upon or soon after the making of the said security, entered into the possession of the said mortgaged premises, or into the receipts of the rents and profits thereof, and hath ever since continued in such possession and receipt, and the said W. B., or the said J. B., on his behalf, also possessed himself of all the title deeds relating to the said premises. And the plaintiff further showeth that the said J. G. the elder departed this life in or about the year —, and that the said E., having survived her husband, departed this life on or about, &c., intestate, and without having made, after the death of her said husband, any conveyance or disposition of such right and interest as she retained at his death in the premises, leaving the plaintiff her eldest son and heir-at-law, who thereupon became entitled to the equity of redemption of the said mortgaged premises.

And the plaintiff further showeth unto your honors, that the said W. B. from time to time made some small payments to the said J. G. the elder, in his lifetime, and after his death to the said E., out of the rents and profits of the said premises. And the said W. B. applied the greater part of such rents and profits to his own use, and by means thereof the said W. B. hath been more than repaid the principal and interest due to him on the security of the said premises. And the plaintiff hath fre-

niston, 4 John. Ch. 35. Decree in the same case, pp. 43, 44.

In Massachusetts, a suit to redeem real estate from an outstanding mortgage may be brought in the county within which the premises are situate. Pub. Stats. c. 181, § 31; see Burlingame *v.* Hobbs, 12 Gray, 870. The plaintiff must be entitled to redeem when the bill is filed, and not merely at the hearing. Bernard *v.* Toplitz, 160 Mass. 162. After a foreclosure sale, there is no right of redemption at Law or in Equity, apart from statute. Parker *v.* Dacres, 130 U. S. 43. A suit to redeem is a suit in Equity, and is subject to the rule that he who seeks equity must do equity. Emerson *v.* Atkinson, 159 Mass. 356, 362; Dary *v.* Kane, 158 Mass. 376; Shaw *v.* Abbott, 61 N. H. 254. In a bill to redeem, the offer to redeem is an essential feature. Emerson *v.* Atkinson, 159 Mass. 356, 360; Way *v.* Mullett, 143 Mass. 49; Brown *v.* South Boston Savings Bank, 148

Mass. 300, 307; Kopper *v.* Dyer, 59 Vt. 477, 489; Goldsmith *v.* Osborne, 1 Edw. Ch. 560. In Massachusetts a bill to redeem land from a mortgage is within the St. of 1883, c. 223, § 13, which provides that suits may be brought in any country where a transitory personal action between the same parties might be brought; the interest and title of an administrator in and to an equity of redemption are sufficiently set forth in a bill to redeem, which, in this respect, follows as closely as possible the form enacted with the above statute. In such a bill an averment that the defendant's testate, who devised all his real estate to the defendant, for a long time before his decease, and the defendant himself during all the time since the testate's decease, occupied the premises without accounting for the rents and profits, sufficiently sets forth the defendant's possession. Dary *v.* Kane, 158 Mass. 376.

quently applied to the said W. B., and requested him to come to an account for the rents and profits of the said premises so received by him, and to pay over to the plaintiff what he should appear to have received beyond the amount of the principal and interest due to him, and to deliver up the possession of the said mortgaged premises ; and the plaintiff well hoped that the said defendant would have complied with such requests, as in justice and equity he ought to have done, but that the said W. B., acting in concert with divers persons unknown to the plaintiff, refuses to comply therewith. To THE END THEREFORE,

that, &c. [See form No. 32, p. 1902.]

* 1920 * And that the said defendant may answer the premises, and that an account may be taken of what, if anything, is due to the said defendant for principal and interest on the said mortgage, and that an account may also be taken of the rents and profits of the said mortgaged premises, which have been possessed or received by the said defendant, or by any other person or persons by his order or for his use, or which without his wilful default or neglect might have been received,¹ and if it shall appear that the said rents and profits have been more than sufficient to satisfy the principal and interest of the said mortgage, then that the residue thereof may be paid over to the plaintiff ; and that the plaintiff may be permitted to redeem the said premises, the plaintiff being ready and willing, and hereby offering to pay what, if anything, shall appear to remain due in respect to the principal and interest on the said mortgage ; and that the said defendant may be decreed to assign and to deliver up possession of the said mortgaged premises to the plaintiff, or to such person as he shall direct, free from all incumbrances made by him or any person claiming under him, and may deliver over to the plaintiff all deeds and writings in his custody or power relating to the said mortgaged premises. [And for further relief, see form No. 38, p. 1885.] May it please, &c. [See form No. 43, p. 1887.]

21. *Bill to redeem by purchaser of an Equity of Redemption from the Assignee in Insolvency of the Mortgagor — alleging possession by the defendants — claiming an account of rents and profits, and money received for losses under Policies of Insurance on the property mortgaged, in Circuit Court of the United States.*

To the Judges of the Circuit Court of the United States within and for the District of Massachusetts, sitting in Equity :

W. H., of S., in the county of P. in the Rhode Island District, a citizen of the State of Rhode Island, brings this his Bill of Complaint against the President, Directors, and company of the W. Bank, a Corporation legally created under the laws of the Commonwealth of

¹ If it is intended to claim for waste of the mortgagor in possession, it must be charged in the bill : otherwise there can be no issue in regard to it. *Gordon v. Hobart*, 2 Story, 260,

261. And if the question of waste is not referred to the Master, he cannot consider it, even on the consent of the parties. *Gordon v. Hobart*, *supra*.

Massachusetts, and located and transacting business in the city and county of W. in said Commonwealth, all citizens of the State of Massachusetts.

And thereupon your orator complains and says: That one S. H., of N., in said county of W., and Commonwealth of Massachusetts, on or about the fourteenth day of October, A. D. 1839, was seised in fee-simple * of, or otherwise well entitled to, certain real estate * 1921 situated in said N., particularly described in certain deeds of conveyance of the same to said S. H., — one from J. F. and S. W., dated December 17, 1821, and one from J. E., dated October 11, 1822, recorded in the Registry of Deeds for the County of W., book 242, page 32; also a deed from J. E. to said S. H., dated May 3, 1825, recorded in said Registry of Deeds, book 248, page 457, copies of which deeds are hereunto annexed, and made a part of this bill marked —.

And your orator further shows, that the said S. H., on or about said fourteenth day of October, A. D. 1839, made a conveyance of said premises, by way of mortgage, to one H. M. H., of B. in the county of S., and Commonwealth of Massachusetts, to secure the repayment of a sum of money, with interest then due from the said S. H. to the said H. M. H.; and that subsequently and on or about the seventh day of March, A. D. 1847, the said H. M. H. transferred and assigned all his interest in said mortgage deed, and in the premises therein described, and in the debt thereby secured, to the defendants. Copies of said mortgage deed, and of the assignment thereof, are hereunto annexed, marked, &c., and made a part of this bill.

And your orator further shows, that after the making of the said transfer, and on the third day of December, A. D. 1849, the said defendants entered into the possession of the said mortgaged premises, or into the receipt of the rents and profits thereof, and have ever since continued in such possession and receipt.

And your orator further shows, that since the said mortgaged premises have been in the possession of the defendants, the mills and principal buildings thereon have been destroyed by fire, and that the same were insured by the said S. H., who occupied said premises under lease from said defendants for the benefit of said defendants, as further security for said mortgage debt, and that large sums have been paid to said defendants, on said policies, and that they still hold other policies upon the machinery in said mills, which was also destroyed by fire, which policies have been assigned to said defendants as further security for, and in payment of, said mortgage debt, and that the whole amount of said policies is sufficient to cancel the greater part, if not the whole, of the residue of said debt, which had not otherwise been paid by said S. H., and that if a just account were taken of such payments, and of the sums received or to be received on said policies, which are now due and payable, and of said rents and profits received by said defendants, the whole of said mortgage debt would be found to be justly paid and discharged.

And your orator further shows, that on the — day of —, A. D. 1921

184-, the equity of redemption which the said S. H. retained and owned in said property, was transferred to one A. W. P. by assignments in the course of proceedings under the Insolvent Law of

* 1922 said *Commonwealth of Massachusetts, to which the said S. H.

was a party, and that said A. W. P., as such assignee of said S. H., by his deed dated the twenty-fourth day of June, A. D. 1844, conveyed said equity of redemption to your orator, a copy of which deed is hereunto annexed, marked, &c.

And your orator further shows, that being the owner of said right of redemption in said property, he has applied to said defendants and requested them to come to an account for the rents and profits of the said premises so received by them, and of the moneys received by them from said S. H., for the interest and principal of said debt, and from the said policies of insurance, and to deliver up the possession of said mortgaged premises to him, upon being paid what, if anything, should be found to be justly due to them upon said account, which your orator is and has been ready and willing to pay, and is ready to bring the same into Court, if anything shall be found to be justly due to said defendants upon the proper taking of said account. And your orator well hoped that the said defendants would have complied with such requests, as in justice and equity they ought to have done; but the said defendants, acting in concert with divers persons unknown to your orator, refuse to comply therewith, and insist upon holding possession of said estate, and foreclosing your orator's right of redemption therein, and retaining said policies and the amounts received thereon, and said rents and profits, without accounting for the same.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and the said defendants may answer the premises, and that an account may be taken of what, if anything, is due to the said defendants for principal and interest on the said mortgage, and that an account may be taken of the rents and profits of the said mortgaged premises, which have been possessed or received by the said defendants, or by any other person or persons, by their order or for their use, or which, without their wilful default or neglect, might have been received; and also of all sums that may have been paid by said S. H. or others towards the principal and interest of said mortgage debt; and also of the policies of insurance and other securities which the said defendants have received, and of the sums which they have or might have realized therefrom, on account of the principal and interest of said debt, and of the value of such policies and other securities now in their hands, on account of said debt, which they have not sold or turned into money; and that the said defendants be ordered to apply the same to the payment of said debt; and that, if it shall appear that said rents and profits, and the payments and the proceeds of said policies and other securities have been and are more than sufficient to pay the principal and interest of said mortgage debt,

that the residue may be paid over to your orator; and that your
* 1923 orator may be permitted * to redeem the said premises, your orator being ready and willing, and hereby offering to pay what,

if anything, shall appear to remain due, in respect to the principal and interest on the said mortgage; and that the said defendants may be decreed to deliver up possession of the said mortgaged premises to your orator, or to such person as he shall direct, free from all incumbrances made by them, or any person claiming under them, and may deliver to your orator all deeds and writings in their custody or power relating to the said mortgaged premises, and that your orator may have such further and other relief in the premises as the nature of this case shall require, and to your honors shall seem meet.

May it please your honors to grant unto your orators the *subpæna* of the United States of America, to be directed to the said President, Directors, and Company of the W. Bank, thereby commanding them at a certain day, and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable Court, and then and there to answer all and singular the premises, and to stand to, abide, and perform such order and decree thereon, as to your honors shall seem meet.

W. H.

*By his Solicitors, T. A. J. and B. F. B.
B. & B., Solicitors.*

22. *Statements in a bill by an assignee of a mortgagor against the mortgagée, who took an absolute deed of the premises, but as security for a debt; and went into possession and sold the premises to bona fide purchasers without notice.¹*

Bill by E. W., of, &c., as assignee of N. W., against A. B., of, &c., states that, on the — day of —, N. W. was seised of a tract of land in C., containing about eleven acres and a half; that about one acre of this land had been sold and conveyed by N. W. to J. F., who, having mortgaged it back to secure the payment of the consideration money, N. W. had entered for breach of condition, and to foreclose the mortgage; that all but the J. F. acre was incumbered by two mortgages, both held by the defendant: the first being a mortgage from said N. W. to F. W., on which there was then due for principal and interest the sum of \$1487⁸², the defendant being the executor and trustee under the will of F. W., in that right holding this mortgage; and the second being a mortgage from N. W. to the defendant, nominally to secure the sum of \$1200 and interest, but really to secure such sums as might be advanced by the defendant to N. W.; and * that on this last-mentioned mortgage there was then due, for *1924 such advances, the sum of four hundred dollars.

The bill further states, that at the same time N. W. also owed the defendant, personally, eight dollars $\frac{1}{100}$, and to him as agent for the heirs of N. W., senior, the sum of one hundred and thirty-six dollars $\frac{71}{100}$; that N. W. was much embarrassed in his affairs, and at the press-

¹ Wyman v. Babcock, 2 Curtis, 386.

ing solicitation of the defendant, who was his brother-in-law, and of W. W., his brother, he consented to make a deed of the said land, excepting the J. F. acre, to the defendant, absolute in form, but intended to stand as security for what N. W. thus owed; that the conveyance was made for that purpose only, and the defendant went into possession; that none of the notes held by the defendant were surrendered or cancelled, the same being retained because the land was held as security only; that the defendant was to have the management of the land and receive the rents and profits, and apply them towards the accruing interest; and if there should be any excess, towards the principal, and that N. W. was to have the right to redeem, at any time when he should be able to do so.

The bill further states, that afterwards the defendant, without any notice to N. W. of his intention to sell, or to purchasers of the nature of his title, sold the land by an absolute title, to *bona fide* purchasers, without notice; and it prays for an account of the rents and profits while held by the defendant, and of the value of the land when sold, and that after deducting the amount for which the land stood as security, the residue may be paid to the plaintiff, who alleges himself to be the assignee, by deed, for a valuable consideration, of all N. W.'s equity in the premises.

23. Bill to have goods redelivered which have been deposited as a security for money lent.

Humbly complaining, sheweth unto your honors the plaintiff, A. S., of, &c., against P. S., of, &c., that the plaintiff having occasion for a sum of money for the purposes of his business, made application to said P. S., the said defendant, to lend him the same, and thereupon the said P. S., on or about —, advanced and lent to the plaintiff the sum of \$—, and in order to secure the repayment thereof with interest, the plaintiff deposited with the said defendant a box of tanned boot legs and tops, which were of the value of \$— and upwards, and at the same time executed and delivered to the said defendant, a bill of sale of the said goods so deposited with him; but it was not meant and intended thereby, either by the plaintiff or the said defendant, that the said trans-

action should amount to an absolute sale of the said goods to the * 1925 said defendant, but it was expressly agreed between the * plaintiff and the said defendant, that the plaintiff should nevertheless be at liberty to redeem the same. And the plaintiff further sheweth, that, being desirous to redeem the said goods, he has frequently applied to the said P. S., and has offered to repay him the said sum of \$—, with lawful interest thereon, on having the said goods redelivered to him, with which just and reasonable requests the plaintiff well hoped that the said P. S. would have complied, as in justice and equity he ought to have done. BUT NOW SO IT IS [see form No. 34, ante, p. 1882], &c. To THE END, &c. [see form No. 37, p. 1884]. And that the said defendant may answer the promises, and that an account may be taken

of what is due to the said defendant for principal and interest in respect of the said loan of \$____, and that upon payment thereof by the plaintiff the said defendant may be decreed to deliver over to the plaintiff the said goods so deposited with him as aforesaid, [and for further relief, see form No. 38, p. 1885]. May it please, &c. [See form No. 43, p. 1887.]

- 24. Bill to redeem by heir¹ of mortgagor, alleging possession, receipt of rents and profits, commission of waste, and actual occupation of part of the premises, by mortgagee.**

SUPREME JUDICIAL COURT.

In Equity,
Essex, ss.

JOHN MOORE	Plaintiff.
HENRY DIX	Defendant.

Bill of Complaint.

To the Honorable the Justice of the Supreme Judicial Court.

John Moore, of Newbury, in said county of Essex, trader, the above-named plaintiff, brings this his bill of complaint against Henry Dix, of Danvers, in said county of Essex, merchant, and thereupon the plaintiff complains and shows as follows: —

1. That Amos Moore, of said Danvers, deceased, the father of the plaintiff, being seised in fee-simple of a farm, situate in said Danvers, bounded and described as follows [*here give description and boundaries*], called the "Baker Place," did, by a deed of mortgage, dated the first day of May, one thousand eight hundred and sixty, grant and convey the said farm, with the appurtenances, unto the said Henry Dix, and to his heirs and assigns, with the proviso or condition that if the said Amos, his heirs, executors, administrators, or assigns, should in one year from the date thereof, pay to the said Henry Dix, his executors, administrators, or assigns, the sum of five thousand * 1926 dollars and interest thereon, agreeably to his promissory note bearing even date with said mortgage deed, the said deed should be void, as by the said deed duly executed, acknowledged, and recorded, and here in Court to be produced, will more fully appear.

2. That the said sum of five thousand dollars and interest was not paid at the time appointed for that purpose.

3. That the said Amos Moore departed this life intestate, on the tenth day of May, 1863, leaving the plaintiff his only child and heir, who thereupon became entitled to the equity of redemption of the said mortgaged premises.

4. That the said Henry Dix entered into the possession of the said

¹ By statute in Massachusetts, the executor or administrator of a deceased owner of an equity of redemption may maintain a bill to redeem as well as the heir or devisee. Pub. Stats. c. 181, §§ 39, 40.

farm on the — day of —, and into the receipt of the rents and profits thereof, and still retains the same.

5. That said Amos Moore, in his lifetime, at various different times, paid the defendant large sums of money upon and towards the amount of said promissory note and the interest thereon.

6. That the defendant, since he took possession of said farm, has cut large quantities of wood and timber on it and sold the same, and received large sums of money therefor.¹

7. That the defendant has himself personally occupied a part of the dwelling-house on said farm.²

8. That the plaintiff has frequently applied to the defendant and requested him to render a just and true account of the said rents and profits — of the payments made towards the mortgage debt — of the sums received for said wood and timber, and the rent with which the defendant should be charged for his occupation of the said house; and has offered to pay him any balance there may be justly due on said promissory note and interest, after making the proper deductions and allowances, and has requested him to deliver up the said farm to the plaintiff; but the defendant refuses so to do.³

Whereupon the plaintiff prays as follows: —

1. That an account may be taken of the rents and profits which have been received by the defendant, or which, without his wilful default, he might have received since he took possession of the said premises.

2. That an account may be taken of the sums of money paid to the defendant by said Amos Moore.

* 1927 *3. That an account may be taken of the said wood and timber so cut on the premises and sold by the defendant.

4. That the value may be fixed and an account may be taken of the rent of that part of said house occupied by the defendant.

5. That an account may be taken of what is due and owing upon said promissory note for principal and interest; and, in taking said account, that rests may be made from time to time, when and as the rents, profits, payments, money received for wood and timber, and the occupation rent shall appear to have exceeded the interest in arrear.

6. That the plaintiff may be declared entitled to redeem said mortgaged premises upon payment of what, if anything, shall be found remaining due to the defendant in respect of the said principal and interest on said promissory note; and that the defendant may be ordered by a decree of this Court, upon said payment being made to the de-

¹ If it is intended to claim for waste of the mortgagee in possession, it must be charged in the bill, otherwise there can be no issue in regard to it. *Gordon v. Hobart*, 2 Story, 260, 261. And if the question of waste is not referred to the Master, he cannot consider it, even on the consent of the parties. *Gordon v. Hobart*, *supra*; *ante*, p. 1940, note 5.

² See *ante*, p. 1939, n.; *Trulock v. Robey*, 15 Sim. 265.

³ The demand for an account under the Revised Statutes of Maine, 1840, c. 125, § 16, must be made upon the party having the legal record title to the mortgage; and an account rendered by a mortgagee, upon the statute demand, covering compound interest, and so exceeding the notes the mortgage was made to secure and legal interest, cannot be regarded as such an account as the statute requires. *Stone v. Locks*, 46 Maine, 445.

fendant, or into the hands of the clerk of this Court, to surrender and deliver up possession of said premises to the plaintiff, or in such other manner as he shall appoint or direct.

7. That the plaintiff may have such further or other relief as the nature of the case may require.

8. That a writ of *subpæna* may issue, directed to the said Henry Dix, commanding him to be and appear before this Court, to be holden in and for the county of Essex, on a day and under a pain therein specified, and then and there, full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein, as to this Court shall seem meet.

SECTION VI.

Bills for Account.

25. *Bill for an account by brokers employed to purchase stocks, and for injunction against suit. [Modern English Form.]*

[*Title, &c.*]

1. The plaintiff, in the month of —, in the year —, entered into an arrangement with — and — the above-named defendants, that the said defendants should, from time to time, as the brokers of the plaintiff, purchase on his behalf certain foreign stock or securities, then commonly called or known by the names, &c., the price or purchase-money of which the defendants were to advance; but the plaintiff engaged on each transaction to deposit with the said defendants certain securities, that is to say, &c.

* [*The bill then proceeds to state that purchases had been made, moneys paid and advanced on both sides, and securities given by the plaintiff to the defendants, and that the defendants had sold certain Spanish debentures and scrip of the plaintiff at a lower price than they ought to have done, without the plaintiff's consent.*] * 1928

3. The accounts in respect of the before-mentioned transactions and dealings are still open and unsettled; nevertheless, the defendants have commenced and are prosecuting an action at law against the plaintiff for the recovery of the sum of £ —, which they allege is the balance or sum of money coming to them in respect of said transactions.

4. The plaintiff, however, charges, that if the accounts between the plaintiff and defendants were properly taken, a considerable balance would be coming from the defendants to the plaintiff.

5. The said accounts cannot be properly taken except in a Court of Equity.

The plaintiff prays as follows: —

1. That the defendants may make a full and true discovery and disclosure of and concerning all and singular the transactions and matters aforesaid, and that an account may be taken by and under the direction

and decree of this honorable Court, of all dealings and transactions between the plaintiff and the defendants.

2. That in taking such account the defendants may be charged with the amount of dividends or coupons which were due on the said Spanish debentures at the time of the aforesaid alleged sale thereof by the said defendants, and also with such sums of money as would have been produced by the sale of such debentures, if the same had been sold at the price or rate of £6 per each £100 of the said stock.

3. That in taking such account the defendants may not be allowed to charge the plaintiff with any sums of money which shall appear to have been paid or applied by them in the purchase of stocks or securities which were never actually transferred or delivered to the said defendants.

4. That the defendants may be charged with all benefit and advantage obtained by them in the said transactions of buying and selling, for and on account of the plaintiff, beyond the amount of the usual and regular commission or brokerage.

5. That the balance which shall be found due upon taking such account may be paid by the defendants to the plaintiff, the plaintiff being ready and hereby submitting to pay to them any balance which shall be found due from him to the said defendants on the aforesaid accounts.¹

6. That in the mean time the said defendants may be restrained by the order and injunction of this honorable Court from further proceeding * in the said action at Law commenced by them against the plaintiff as aforesaid, and from commencing or prosecuting any other action or proceedings at Law against the plaintiff in respect of or concerning the matters aforesaid or any of them.¹

26. Substance of a bill by an administrator of a cestui que trust, for an account and payment of moneys received by the trustee for timber cut from the land held in trust and sold by him.

Aaron Phillips v. Sarah G. Allen.

The bill sets forth that the plaintiff is administrator of the estate of G. A. A., deceased, who was the minor child and sole heir of A. A.,

¹ Although usual, it seems, according to Clarke v. Tipping, 4 Beav. 588, not to be necessary for the plaintiff to submit to account. Jervis v. Berridge, L. R. 8 Ch. 351, 357. But see Inman v. Wearing, 3 De G. & Sm. 731; Knebell v. White, 2 Y. & C. Exch. 15.

¹ A general allegation that the accounts are of an intricate nature, is insufficient to entitle the plaintiff to maintain a bill for an account, but it must be supported by specific statements of facts showing the intricate and complex nature of the accounts. Padwick v. Hurst, 23 L. J. Ch. 657: 18 Beav. 578, M. R. In Phillips v. Phillips, 9 Hare, 471, a demurrer to a bill for an account was allowed, inasmuch as it did not

appear that the account between the plaintiff and the defendant was mutual, or that the payments forming one side of the account were other than matters of set-off as against the receipts on the other side, and notwithstanding a statement in the bill that the defendant had in a particular transaction acted as the agent of the plaintiff in receiving moneys on his account. See also Foley v. Hill, 1 Ph. 398; 2 H. L. Cas. 28; Fluker v. Taylor, 3 Drew. 183; Bartlett v. Parks, 1 Cush. 82. As to a bill for account by one tenant in common against another, see Leake v. Cordeaux, 4 W. R. 806; M'Mahon v. Burchell, 2 Ph. 127.

deceased; that R. A., deceased, by his will, devised to his wife, the defendant, the rents, profits, income, and improvement of all his real estate during the time she should remain his widow, with remainder in fee, of a portion of the land, to his son G. F. A., in trust, for the benefit of A. A. during his life, and after his death to convey the same in fee to the lawful issue that he might have born to him after the date of the will; and providing further, in said will, that, as G. F. A. was then a minor, the defendant should execute the trust as long as she lived. The bill further alleges that S. D. A. was the mother and sole heir of G. A. A., and that she also had died, leaving the plaintiff her father and sole heir;² that after the death of A. A. and G. A. A., the defendant duly accepted the trust, gave bond, and entered upon the discharge of the same; that S. D. A., in her lifetime, exhibited a bill of complaint against the defendant to compel the conveyance of the estate, subject to the defendant's life-estate; and after the death of said S. D. A., the plaintiff exhibited a bill of revivor against the defendant, setting forth the facts, on which a decree in his favor was made; that before entering upon the trust, or giving bond for the due performance thereof, the defendant entered upon the land and committed strip and waste thereof, and cut off and sold wood and timber therefrom, to the injury of the inheritance.

The prayer was for an account, and for a decree for the payment of such sum as should be found due, and for further relief.

* SECTION VII.

* 1930

Bill for Contribution.¹

27. A bill to obtain an adjustment of a general average loss, and payment by the defendants of their contributory shares.

To the Judges of the Circuit Court of the United States for the District of Massachusetts.

L. L. S., G. M. C., and G. B., of the city, county, and State of N. Y., and W. B., of S., in the State of C., merchants and citizens of the said States, and of the United States; the Sun Mutual Ins. Co., the N. Y. Mut. Ins. Co., and the General Mut. Ins. Co., corporations established within and by the authority of the State of N. Y., and doing business in the city of N. Y., bring this their bill of complaint against T. G. C., G. H., O. E., P. C., W. A., and against D. G. and J. P., copartners; S. A. E., C. H. M., I. K. M., and P. T. J., copartners, under the firm of C. H. M. & Co., all of B., in the Commonwealth of Mass., and citizens of the U. S., and of the said Commonwealth of Mass.

And thereupon your orators complain and say, that on the — day of —, the said S., C., G. B., and W. B. were owners of a certain

² The bill is not multifarious by reason of this averment. Phillips v. Allen, 5 Allen, 85.

¹ Sturges v. Cary, 2 Curtis, 59; see Merriam v. Sampson, 4 Allen, 192.

vessel, — a barque called the Vernon, — and that the said several corporations were insurers thereon, to the full amount of her value, against the perils of the seas, and other perils in the policies of insurance mentioned; that on the — day of —, said vessel was laden with a cargo of cotton and merchandise, owned by, and consigned to, the said several defendants, as appears by the said several bills of lading, here in Court produced, and made part of this bill; that on said — day of —, said vessel set sail and departed from —, in the State of —, bound for Boston aforesaid; that on the night of the — day of — then next ensuing, said vessel was in Massachusetts Bay, in a heavy gale, and, &c. [Here describe the circumstances of a voluntary stranding for the safety of the ship, cargo, and lives of those on board.]

Your orators further show that, afterwards, the cargo on board said vessel was safely landed and delivered to the said defendants respectively, and that the said vessel was afterwards got off, and the damage occasioned by her being so voluntarily stranded repaired.

Your orators further show that said vessel, her freight and cargo, were in imminent danger, and would in all probability have been totally lost, if the cables had not been slipped, and said vessel run ashore as aforesaid; and that by the said voluntary stranding the same were saved and preserved to the respective owners thereof.

* 1931 * Your orators further allege, that by the said voluntary stranding great damage was done to said vessel, and heavy expenses incurred in consequence thereof, and in getting her off and repairing said damages; and that the owners of said vessel are entitled to demand and receive of the owners of her cargo their respective proportions of the damage, loss, and expenses so incurred, the same being a sacrifice made and incurred by the owners of said vessel, for the common benefit of the vessel, cargo, and freight, and all interested therein.

Your orators further show, that, in consequence of the damage suffered by said vessel as aforesaid, the owners thereof abandoned the same to the said corporations, the insurers thereon, and the said corporations accepted said abandonment, and paid the sums by them respectively insured, and thereby became assignees of, and subrogated to, all the rights of the owners of said vessel, to demand and receive a contribution from the owners of the said cargo for the damages, losses, and expenses incurred for the general benefit.

Your orators further show, that on the — day of — they caused to be prepared a general average adjustment, showing the amount of the losses, damages, and expenses incurred by reason of the said voluntary stranding, and of the apportionment thereof upon the said vessel, her cargo and freight, and the several owners thereof, and that by said adjustment it appeared that the said T. G. C. ought to pay the sum of \$—; the said P. C. the sum of \$—; the said G. & P. the sum of \$—; the said C. H. M. & Co. the sum of \$—; the said O. E. & Co. the sum of \$—, &c., &c.; and that the said W. A. is entitled to receive the sum of \$—, as will appear by reference to said adjustment, here

in Court to be produced, and said several defendants were then respectively requested to pay the sums from them due as aforesaid.

And your orators well hoped that said defendants would have paid the sums so due from them as requested.

But now so it is, may it please your honors, that the said defendants refuse to pay the sums from them respectively due as aforesaid, and pretend that the said vessel was not voluntarily stranded, and that the owners thereof and their insurers, are not entitled to demand and receive any contribution for the damage sustained by the stranding, and expense of getting off and repairing said vessel, the contrary whereof your orators charge to be true.

Pray *subpoena* to the said, &c. [*the defendants*], and that they may be ordered and decreed to pay to your orators the sums so due from them respectively, or such other sums as may be found due to your orators, and to stand by, &c.

G. G. L., F. C. L., and C. W. L.,
Counsel for Plaintiffs.

R. C.,
C. G., T. C., and C. W. L., } *Solicitors.*

* SECTION VIII.

* 1932

*Bills by Creditors.*28. *Bill by creditor against devisees in trust and executors of testator.*
(*Modern English Form.*)

In Chancery.

Lord Chancellor.

Vice-Chancellor.

Between J. S. (on behalf of himself and all other
the unsatisfied creditors of W. W., late, &c.,
who shall come in and contribute to the expenses
of this suit). Plaintiff,
and

J. A., E. B.,¹ and W. B.,² Defendants.

Bill of Complaint.

To, &c.

Humbly complaining, sheweth unto his Lordship, J. S., of, &c., the above-named plaintiff, on behalf, &c.

Testator indebted to plaintiff.] 1. That the said W. W., deceased, was on, &c., indebted to the plaintiff in the sum of two hundred and eighty pounds, upon the balance of accounts then settled by and between the plaintiff and the said W. W., deceased.

2. The said W. W., deceased, by his promissory note, dated, &c., two

¹ There were executors and devisees in trust of real estate for sale.

² W. B. was the *cestui que trust*. See Smith v. Andrews, 4 W. R. 353.

months after date, promised to pay the plaintiff the sum of two hundred and eighty pounds.

3. The said last-mentioned promissory note was given to secure the amount due to the plaintiff as mentioned in the first paragraph of this Bill.

Debt still owing to plaintiff.] 4. The said sum of £____, &c., remained justly due and payable to the plaintiff from the said W. W., deceased, at the time of his decease.

Will of testator.] 5. The said W. W., deceased, made his will, dated, &c. (and which was duly executed and attested), and the said testator thereby devised all his real estate and personal estate to the defendants, J. A. and E. B., their heirs, executors, administrators, and assigns, upon trust to sell and collect and get in the same.

[The trust of the money arising from such sale being declared for the benefit of the defendant, W. B., if he should die before twenty-five years without leaving issue.

*1933 **Death of testator.]* 6. The testator W. W. died in, &c., without having altered or revoked his said will, leaving the several persons named in his said will him surviving.

Proof of will.] 7. The said will of the testator was duly proved, &c., by the defendants J. A. and E. B., who thereby became, and now are, his sole legal personal representatives.

8. The testator was, at the time of his death, indebted to several persons other than the plaintiff.

9. The testator was, at the time of his death, possessed or entitled of or to personal estate of considerable value.

10. The testator also died seised or entitled of or to divers lands, messuages, and other real estate, situated in the county of Gloucester, and elsewhere in England.

Executors have possessed themselves of testator's estate.] 11. The defendants J. A. and E. B., have, since the death of the said testator, possessed themselves of the whole of the personal estate of the said testator, and, as the devisees in trust or trustees of said will, they entered into, and are now in the possession or receipt of the rents and profits of his real estate, and they have received a large sum of money in respect of the real and personal estates of the testator.

Applications.] 12. The plaintiff has, by himself and his solicitor, made divers applications to the defendants, J. A. and E. B., and requested them to pay what is due to him for principal and interest in respect of his said claim, but they have refused so to do.

13. The said last-named defendants, however, allege that the personal estate of the said testator is insufficient to pay his debts, whereas the plaintiff insists, that if such allegation be true, yet that the personal estate of the testator, together with his real estate, is more than sufficient for payment of all his debts and funeral and testamentary expenses.

14. The said defendants also allege, that the real estate of the testator is subject to certain mortgages or incumbrances, and that they have been unable to sell the said real estate or any part thereof.

15. The defendant W. B. has attained the age of twenty-five years.
 16. The defendant W. B. claims to be interested in the matters in question in this suit, and insists that he is a necessary party thereto.¹

Prayer.

The plaintiff prays as follows.

An account of plaintiff's debt.] 1. That an account may be taken of what is due to the plaintiff in respect of his said debt so due and owing to him from the said testator, W. W., as aforesaid, and of all * other debts which were owing by the testator at the time of his * 1934 death, and which still remain unpaid.

2. That the trusts of the said testator's will may be carried into execution by and under the direction and decree of this honorable Court.

Account of personal estate.] 3. That an account may be taken of the personal estate and effects of the testator received by the said defendants, J. A. and E. B., or either of them, or by any other person or persons, by their or either of their order, or for their or either of their use, and that the said estate may be applied in payment of the testator's debts and funeral expenses, and that the following further accounts and inquiries may be taken and made (that is to say).

Account of real estate.] 4. An inquiry of or to what real estate the testator was seised or entitled at the respective times of the date of his will and of his death.

5. An inquiry whether any and what incumbrances affect the said testator's real estate.

6. An account of the rents and profits of the said testator's real estate received by the defendants J. A. and E. B., or either of them, or by any person by their or either of their order, or for their or either of their use.

7. That the real estate of the said testator, or a sufficient part thereof, may be sold, and that the rents and produce thereof may be applied in payment of the testator's debts.

That defendants may be restrained from receiving the assets.] 8. That the defendants J. A. and E. B. may, if necessary, be restrained by the injunction of this honorable Court, from retaining, receiving, or collecting any of the moneys, debts, or other outstanding personal estate of the testator and from receiving the rents and profits of the real estate of the testator, and that some proper person may be appointed to receive all the outstanding personal estate and effects of the testator, and to collect and get in the debts owing to him.¹

¹ The allegations in this bill, except those which relate to the debt of the plaintiff, can be adapted to the case of a legatee. In an ordinary creditor's suit, the decree does not go further than to direct payment of the testator's debts. As to Federal jurisdiction, see Borer v. Chapman, 119 U. S. 587.

¹ A voluntary covenant for payment of a

sum of money is a sufficient debt to support a creditor's suit. Watson v. Parker, 6 Beav. 283; see also Lomas v. Wright, 2 My. & K. 769; Clough v. Lambert, 10 Sim. 174; Tufnell v. Constable, 7 Adol. & E. 798.

Form of Advertisement for Creditors.— Pursuant to a decree of, &c., made in a cause J. B. & others v. L. H. & others, the creditors

* 1935 * 29. *Creditors' bill against a corporation and its stockholders, stating the grounds on which they are liable under the Statutes of Massachusetts.*¹

S—, ss.

To the Honorable, the Justices of the Supreme Judicial Court, next to be holden at Boston, within and for the County of Suffolk, on the first Tuesday of April next.

Humbly complaining, show the plaintiffs, the Essex Company, a corporation duly established under the laws of this Commonwealth, having its place of business at L., in the county of E., on behalf of themselves and all the other unsatisfied creditors of the defendant corporation hereinafter named, who shall come in and contribute to the expenses of this suit, that by an act of the legislature of this Commonwealth, approved the twenty-sixth day of March, in the year eighteen hundred and fifty-two, J. W. E., and others, with their associates, were authorized to organize a corporation by the name of the Lawrence Machine Shop, for the purpose of manufacturing machinery in said L., with a capital stock not exceeding seven hundred and fifty thousand dollars; that thereupon on the — day of —, under and by virtue of said Act, the said Lawrence Machine Shop was duly organized, and then became and was a manufacturing corporation under the laws of this Commonwealth, having its works established at L. aforesaid.

And the plaintiffs further show, that the capital stock of said corporation was fixed and limited by said corporation at seven hundred and fifty thousand dollars; and that on the twenty-seventh day of January, in the year eighteen hundred and fifty-three, and before the whole amount of the capital stock fixed and limited by said corporation had been fully paid in, and before any certificate thereof had been made and recorded as prescribed by law, the said Lawrence Machine Shop, by G. McK., its treasurer, duly authorized thereto, made and delivered to the plaintiffs three several promissory notes in writing, dated the said twenty-seventh day of January, one for the sum of fifty thousand dollars, the other two for fifteen thousand dollars each, and thereby, for value received, promised the plaintiffs to pay to them or their order the amount of said notes, to wit, eighty thousand dollars, on the fifteenth day of January, in the year eighteen hundred and fifty-eight, with interest from the fifteenth day of January, of the year eighteen hundred and fifty-three, copies of which notes, with the indorsements thereon, are set out in the copy of judgment hereto annexed.

And the plaintiffs further show, that at the time the said Lawrence Machine Shop made and delivered said notes to the plaintiffs, and from

and legatees of E. M., of —, in the county of —, deceased, are to come in and prove their respective debts, and claim their respective legacies before F. I., or Master of said Court, at his office, in, &c., on or before the — day of — next, or, in default thereof,

they will be excluded the benefit of the said decree.

¹ See Stat. Mass. 1862, c. 218; Essex Co. v. Lawrence Machine Shop, 10 Allen, 352; Erickson v. Nesmith, 46 N. H. 371.

the time of its incorporation and organization until the twenty-first day of February, in the year eighteen hundred and fifty-seven, the said * Lawrence Machine Shop had not given notice annually as * 1936 required by the laws of this Commonwealth, in some newspaper printed in the county where the works of said corporation were established, to wit, the county of E., or in any newspaper printed in any other county, of the amount of all assessments voted by the corporation and actually paid ~~in~~; nor had it given notice in any newspaper of the amount of all existing debts due from said corporation.

And the plaintiffs further show, that from the time of the incorporation and organization of the said Lawrence Machine Shop to the time said corporation made and delivered said notes to the plaintiffs, and for a long time thereafter, the capital stock fixed and limited by said corporation as aforesaid, had not been fully paid in; nor has there, from the time of its organization to the present time, been any certificate of the payment of said capital stock made and recorded by said corporation as by law provided.

And the plaintiffs further show that on, to wit, the fourth day of August, in the year eighteen hundred and sixty-two, they commenced a suit against the said Lawrence Machine Shop upon the aforesaid notes, returnable to the — Court, then next to be holden at N., within and for the said county of E., on the first Monday of September, in the year eighteen hundred and sixty-two, and duly entered said suit in said Court, and there prosecuted the same to judgment. And at said term of the said Court, on, to wit, the twenty-first day of October, in the year eighteen hundred and sixty-two, by consideration of the Justice of said — Court, judgment was rendered in said suit against said Lawrence Machine Shop in favor of the plaintiffs for the sum of thirty-seven thousand seven hundred and forty-seven dollars and sixty-two cents debt, and fifteen dollars and eighty-nine cents costs of suit, and execution was thereupon issued by said — Court, on, to wit, the twenty-fifth day of said October, against said Lawrence Machine Shop in favor of the plaintiffs for the said sum of thirty-seven thousand seven hundred and forty-seven dollars and sixty-two cents debt, and fifteen dollars and eighty-nine cents costs of suit; copies of which judgment, execution, and officer's return upon said execution are hereto annexed.

And the plaintiffs further show, that on, to wit, the said twenty-fifth day of October, A. D. 1862, the day of issuing said execution, they placed for collection said execution in the hands of one A. F. N., a deputy sheriff, qualified to collect, serve, and return said execution. And the said deputy sheriff, on, to wit, the third day of November, A. D. 1862, made demand upon the said Lawrence Machine Shop for the payment of the amount due to the plaintiffs; and for which judgment and execution had been rendered and issued in said suit as aforesaid.

And the plaintiffs show that the Lawrence Machine Shop did neglect, for the space of thirty days after said demand by said deputy sheriff holding said execution, to exhibit to said deputy sheriff real or personal * estate belonging to said corporation, subject to be * 1937 taken on execution, sufficient to satisfy said execution or any

part thereof. And the said corporation has never exhibited to said deputy sheriff any estate, real or personal, from which he might satisfy said execution in whole or in part; and the said corporation has ever since neglected and refused to pay the same or any part thereof; and the said deputy sheriff duly returned said execution into the clerk's office of said —— Court, at S., in said county of E., in no part satisfied; and there is now due to the plaintiffs upon said judgment, rendered upon said notes, the said sum of thirty-seven thousand seven hundred and forty-seven dollars and sixty-two cents debt, and fifteen dollars and eighty-nine cents costs of suit, making in all thirty-seven thousand seven hundred and sixty-three dollars and fifty-one cents, with interest from the said twenty-first day of October, A. D. 1862, the day of the date of said judgment.

And the plaintiffs further show that at the time when said judgment debt was contracted, on, to wit, the twenty-seventh day of January, in the year eighteen hundred and fifty-three, the day of the date of said notes, and during the time from and after the said twenty-seventh day of January, A. D. 1853, and before the capital stock of said corporation, fixed and limited as aforesaid, was fully paid in, and before any certificate that said capital stock had been paid in, was made and recorded, as by law required, and from and after the said twenty-seventh day of January, A. D. 1853, and before any notice of the assessments, voted by said corporation and actually paid in, had been given, in any newspaper printed in said county of E., or printed in any other county; and from and after said twenty-seventh day of January, A. D. 1853, and before any notice of the amount of all existing debts due from said corporation had been given in any such newspaper as by law required, and at the time when your orators commenced their suit aforesaid against the said Lawrence Machine Shop, and in which judgment aforesaid was rendered, the following named persons became, and were, stockholders in the said Lawrence Machine Shop, each holding stock therein of the amount and number of shares set against their respective names: —

T. A., of L., county of M., holder of —— shares, par value \$——

E. B., of B., county of S., holder of —— shares, par value \$——

&c., &c.

Wherefore the plaintiffs, in behalf of themselves and the aforesaid other creditors of the said Lawrence Machine Shop, bring the foregoing bill against said Lawrence Machine Shop, and the aforesaid stockholders therein, and pray that the aforesaid stockholders may be ordered and decreed to pay to the plaintiffs the amount due them as aforesaid, as fixed and determined by the judgment aforesaid, with interest from the date of said judgment, and to pay such other creditors of the said corporation as may become parties to this bill such sums as may be found

due to said creditors; and that the amount of the debt due as

*1938 *aforesaid to the plaintiffs from said Lawrence Machine Shop,

and such as may be found due to such other creditors as may become parties hereto, may be assessed upon said stockholders as Law and Equity may require.

And that the plaintiffs may have such orders, deerees, and process

as may be necessary to enforce the payment of such sums as may be assessed upon said stockholders, and may have such further and other relief in the premises as the nature and circumstances of the case may require and as shall seem meet unto this honorable Court;

May it please your honors to grant unto the plaintiffs a writ of subpoena, to be directed to the said Lawrence Machine Shop, and the said stockholders in this bill named, thereby commanding them, at a certain day, and under certain penalties therein expressed, personally to appear before this honorable Court, and then and there full, true, direct, and perfect answers make to all and singular the premises: and further, to stand to, perform, and abide such further orders, directions, and decrees therein as to this honorable Court shall seem meet.

The Essex Company, by its Treasurer,

C. S. S.

D. S., Jun.

J. J. S.

Solicitors and of Counsel.

30. *Bill by a creditor against a foreign debtor, being an insurance company, and their agent having property in his hands within the State, to compel the application, in payment of the debt, of such property, not being of a nature to be attached at Law under the Statutes of Massachusetts.¹*

The bill of complaint of D. S., of N., in the county of E., plaintiff, against the Columbia Insurance Company of C., in the State of S. C., and H. E., of B., in the county of S., and State of Massachusetts, defendants.

The plaintiff humbly complaining shows unto your honors, that the Columbia Insurance Company of C., in the State of S. C., is a foreign Insurance Company, established by the laws of the State of S. C., and that the said company, at and prior to date of the policies hereinafter mentioned, transacted, and ever since has transacted in this Commonwealth the business of an Insurance Company under and by virtue of the laws of this Commonwealth in that behalf made, and that at the periods and during all the time aforesaid, H. E., of B., in the county of S., was and still is the general agent of the said company for the State of Massachusetts, appointed by said company as such, in pursuance of the statute in that behalf made.

*The plaintiff further shows, that on the nineteenth day of September, A. D. 1854, the said Columbia Insurance Company by their policy of insurance, duly executed and issued to the plaintiff on said day at B. aforesaid, caused him to be insured against the perils of the sea \$—— on the outfits and \$—— on catchings on board the schooner A., at and from the coast of L., commencing the risk on the 9th day of August, 1854, at noon, on a fishing cruise, as will more fully appear by a copy of said policy of insurance hereunto annexed, marked A., which the plaintiff prays may be taken as a part of his bill.

¹ *Sillway v. Columbia Ins. Co., 6 Gray, 190.*

And the plaintiff further shows, that he is informed and believes, and therefore avers, that within the period named, on the twenty-first day of August, A. D. 1854, and while said vessel was on the fishing cruise mentioned in said policy, there happened by reason of the perils insured against in said policy to the plaintiff, a general average loss on said outfits and catchings, to the amount of \$_____, and a partial loss on the same to the amount of \$_____, and that due notice and proof of said loss were made without delay by the plaintiff to said Insurance Company, namely on the ninth day of October, A. D. 1854; — and thereupon it became and was the duty of the said Insurance Company to pay the plaintiff the amount of said loss in sixty days from said notice and proof of loss; but they have never paid the same nor any part thereof, except the sum of \$_____, although sixty days have more than elapsed. [The bill goes on to state another policy of insurance and loss under it, and neglect by said company to pay, and proceeds as follows.]

And the plaintiff further shows, that the said Columbia Insurance Company has not neglected or refused to pay the claims of the plaintiff as aforesaid, by reason of any denial of the validity of the same, for on the contrary, the plaintiff, upon his personal knowledge, avers that said Insurance Company admits the justness and validity of said claims.

And so the plaintiff avers, that at and before the filing of this bill of complaint, and at and before the issuing of the writ hereinafter mentioned, he was, and now is, a creditor of the said Columbia Insurance Company to a very large amount; namely, the sum of seven thousand dollars.

And the plaintiff further shows, that heretofore, to wit, on the twentieth day of January, A. D. 1855, he commenced an action at Law against the said Columbia Insurance Company to recover the amounts due him on the policies of insurance aforesaid, at the next May term of our Supreme Judicial Court for the county of E., and that on the same day he delivered the writ in said action to a proper officer for service, with directions to attach the property of said Insurance Company if any such could be found, and the said officer has returned on said writ, that after diligent search he could find no property

* 1940 of the *said Insurance Company which was by law attachable, as will more fully appear from a copy of said writ with the return thereon hereunto annexed, and to which the plaintiff craves leave to refer as part of his bill.

And the plaintiff further shows, that during a long period previous to the commencement of said action at Law and the filing of this bill of complaint, he has made diligent inquiries to ascertain whether the said Columbia Insurance Company had or has any property within this Commonwealth which can be come at to be attached or taken on execution, and he has never ascertained or discovered that there was any such property, but is informed and believes that there is not, and upon his information and belief, he avers, that at and before the commencement of his said suit at Law, and the filing of this bill of complaint, there was no property of said Columbia Insurance Company within this

Commonwealth which could be come at to be attached or taken on execution.

And the plaintiff further shows, that he is informed and believes, and therefore avers, that there is a large amount of valuable property of the said Columbia Insurance Company now within this Commonwealth in the hands and possession of the said H. E., the general agent of the said company as aforesaid, but which cannot be come at to be attached or taken on execution in a suit at Law against the said Insurance Company ; and that said property consists chiefly, if not wholly, of promissory notes which the said H. E. now holds, as the agent of the said Insurance Company, and which have been given in payment for the premiums on policies heretofore issued by the said Insurance Company within this Commonwealth, and that a very large sum of money is due to the said company, and is collectible on said notes, and that the plaintiff is informed and believes that said sum exceeds the sum of fifty thousand dollars, but the plaintiff is unable to state more definitely the amount of said notes, or to give a fuller description of the same, because he has had no opportunity to see said notes, and has been unable to procure a list of the same, although he has requested H. E. to furnish him with one.

And the plaintiff further shows, that the said H. E. is liable at any time to pass said notes out of his own hands and control into the control and possession of other agents and officers of said Insurance Company not residing within this Commonwealth, and beyond the reach of the process and jurisdiction of this honorable Court.

And the plaintiff further shows, that in justice and equity, and especially by virtue of the 206th Chapter of the Acts of 1851, entitled "An act to provide for further remedy for creditors," the plaintiff is entitled to have the property of the Columbia Insurance Company aforesaid now in the hands of the said H. E. as aforesaid applied to the payment of the debt now due and payable from the said Insurance *Company to him as aforesaid, and that he is entitled to * 1941 the aid of this honorable Court as a Court of Equity in that behalf.

Wherefore the plaintiff prays that the said H. E. may be enjoined from passing the said property of the Columbia Insurance Company now in his possession, into the possession of said Insurance Company, or of any agent or officer thereof, without the order and direction of this honorable Court, and that the said H. E. may discover under oath what promissory notes and other property of the said Insurance Company may now be in his possession or under his control, and that he may be required to deliver up the same into the custody of this honorable Court, and that the amount of the debts due from the said Insurance Company to the plaintiff on said policies of insurance may be fixed and determined, and that so much of the property of said Insurance Company now in the hands of the said H. E. as may be necessary for that purpose may be applied for the payment of the debt due to the plaintiff from said Insurance Company as aforesaid, and to

grant the plaintiff such other and further relief as to justice and equity may appertain.

To this end may it please your honors to grant unto the plaintiff not only your writ of injunction to be directed to the said H. E., and said company, restraining him from putting away said promissory notes and other property, and directing him to place the same in the custody of such person or persons as your honors may appoint, but also, &c. [Prayer for subpoena against said H. E. and the Columbia Insurance Company.]

(Jurat.)

D. S.

SECTION IX.

Bill respecting the Excessive Use of a Right.

31. *Bill for an account and injunction, where a trespass had been committed, by exceeding a limited right to enter and take stone from a quarry, such trespass being a destruction of the inheritance.*

To, &c.

The plaintiff A. B., of, &c. That the plaintiff now is, and for several years past has been, seised in fee-simple of and in certain lands and hereditaments, situate at C., in the county of D.; and in the said estate, at a certain place called E., there is, and for a considerable time past has been, a stone quarry, whence stone, for various purposes, of considerable value, has from time to time been obtained; and that L. M., of, &c. (the defendant hereinafter named), is also seised in fee-

* 1942 simple, of * and in certain messuages, lands, and hereditaments, and among others, of and in a certain farm called N. Farm, now

in his own occupation, adjoining and contiguous to the plaintiff's said estate at C. aforesaid, and also to the said stone quarry; and the said L. M., as owner or occupier of the said farm, called N. Farm, was and is entitled to enter into the said quarry at E. aforesaid, and take thence stone for building and other purposes, for that part of his estate called N. Farm aforesaid, but for no other part of his said estate; but the said L. M., notwithstanding his right was so limited as aforesaid, has taken a considerable quantity of stone from the said quarry, for the purpose of using it on other parts of the said estate. And the plaintiff further sheweth unto your honors, that the plaintiff has frequently of late, by himself and otherwise, applied to the said L. M., and requested him to account for so much stone as has been so taken and used or intended to be used, on any part of his said estate, other than N. Farm aforesaid, and to make to the plaintiff a reasonable satisfaction for the same, and to desist in future from taking any stone from the said quarry, except for N. Farm aforesaid, without the plaintiff's permission, which your orator hoped the said L. M. would have done. But now so it is, may it please your honors, the said L. M., &c., refuses to comply with such requests, and threatens and intends to get, take, and carry away great

quantities of stone from the said quarry, to be used upon other parts of his said estate as well as N. Farm aforesaid; and he pretends that he is entitled so to do, and that his said privilege extends to the whole of his said estate. Whereas the plaintiff charges, that such privilege is expressly limited and confined to N. Farm aforesaid, and that in case the said L. M. shall persist in his said intention, he will occasion irreparable damage and injury to the plaintiff and to his said estate. And if the said L. M. shall pretend that the said privilege extends to any other part of his said estate than N. Farm aforesaid, then that he may discover and set forth in what manner in particular he makes out the same. And that the said L. M. may make a full and true disclosure and discovery of and concerning the several matters aforesaid; and that he may also discover and set forth what quantity of stone has been taken from the said quarry, and used and applied by or for him otherwise than in and upon N. Farm aforesaid, and when the same and every part thereof was taken, and how used, applied, or disposed of, together with the value thereof, and of every part thereof. And that an account may be taken, by and under the decree and direction of this honorable Court, of all the stone taken from the said quarry by the said L. M., and used, or intended to be used, or disposed of by him otherwise than in and upon N. Farm aforesaid, and that the value thereof may be ascertained, and the said L. M. decreed to pay the same to the plaintiff. And that in the mean time the said L. M. and his agents and workmen, may be restrained, by the order and injunction * of this honorable Court, from getting, taking, and carrying away any stone from the said quarry, except for building and other purposes in and upon N. Farm aforesaid. [General relief.] May it please, &c.

SECTION X.

Bills relating to Partnership Matters.

32. Bill by one partner against another in the business of carpenters and builders, for an account of partnership transactions, the defendant having entered into various speculations without the consent of the plaintiff, and charged the loss of such speculations to the firm. The defendant having also hindered the plaintiff from attending at the place of business, the plaintiff took other premises and carried on business in the partnership name. The bill also prays for an injunction to restrain the defendant from receiving the partnership moneys, and for a Receiver, and also for directions as to the future management of the business.

Humbly complaining showeth unto your honors the plaintiff H. B., of, &c., carpenter and builder, that in or about the month of, &c., the plaintiff agreed with W. P., of, &c., carpenter and builder, the defendant hereinafter named, to become a partner with him in his said trade and business, and thereupon a certain indenture of two parts bearing

date on the —— day of, &c., was made and executed by and between the plaintiff and the said W. P., which among other things therein contained was as follows, viz. [*stating the deed*]. And the plaintiff further showeth that the said partnership trade and business was accordingly entered upon and carried on by the said W. P. and the plaintiff pursuant to the provisions of the said indenture, and the same hath ever since continued and now continues ; and the plaintiff hath from time to time in all things duly conformed to the stipulations and agreements in the said indenture contained. And the plaintiff further showeth that the said W. P. has since the commencement of the said partnership been in the habit of receiving all large sums of money, and of drawing all checks and bills of exchange on the partnership account ; but the said W. P. has not duly and regularly entered all such transactions on the partnership books of account, but has entered therein only a small part of such transactions, and has kept the plaintiff in ignorance thereto ; and the said W. P. has drawn many bills and given many acceptances and notes in the name of the partnership firm, not in respect of the partnership concerns, but for his own private purposes. And the plain-

tiff further showeth that, notwithstanding the provision in the * 1944 said partnership articles that the partnership * accounts should

be duly stated and made up on the — of — in each year, yet the said W. P. has not yet stated and made up the partnership accounts to the — day of — although he has been repeatedly applied to for that purpose. And the plaintiff further showeth that after the formation of the said partnership, the said W. P., without consulting or communicating with the plaintiff, took in his own name certain ground and premises in —, and also in —, and the said W. P. built thereon, and the carpenters' work to such respective buildings was done by the partnership workmen and from the partnership stock, but all other workmen were employed thereon by the said W. P. without any communication with the plaintiff. And the plaintiff further showeth that such several speculations having proved unprofitable, and a considerable loss having been incurred thereby, the said W. P. has lately pretended that all such speculations were entered into by him on partnership account, and that the plaintiff is to bear his proportion of the loss. And the plaintiff further showeth that in or about, &c., the said W. P. took a lease of premises in — in his own name, and the said W. P. proceeded to build a house thereon, and represented to the plaintiff that he was building it for Mr. R., and the carpenters' work was by the desire of the said W. P. at first entered in the partnership books to Mr. R.'s account : but the said W. P. afterwards informed the plaintiff that he was to build the house on his own account, and the carpenters' work was from thence considered as the private debt of the said W. P. And the plaintiff further showeth that the expense of building the said house, including the carpenters' work, amount to \$ —, and that the said W. P. afterwards sold the said house for \$ — only, and then insisted that it was a speculation on the partnership account, and that the plaintiff should bear his proportion of the loss. And the plaintiff further showeth that the said W. P., in the beginning of the year —,

applied to the father of the plaintiff for a loan of money, alleging the trade required more, and that the plaintiff had not a sufficient capital in the trade. And the plaintiff further showeth that the plaintiff's father upon that occasion referred to the plaintiff, and being informed of the reasons which the plaintiff had to complain of the conduct of the said W. P., refused to advance any further sum of money, and thereupon differences and disputes arising between the said W. P. and the plaintiff, the said W. P. proposed terms for the dissolution of the partnership to which the plaintiff acceded, but the said W. P. afterwards changed his terms, and the plaintiff not being able to come to any agreement in that behalf with the said W. P., gave notice to the said W. P. that all treaty for a dissolution was at an end. And the plaintiff further showeth that the plaintiff afterwards continued to give his attention to the partnership business as usual, although he was upon many occasions abused and insulted by the said W. P. And the plaintiff further showeth

* that on the — day of — the plaintiff was at the partnership counting-house when a message came from Mr. — requesting Messrs. P. and B. to send a man to his house to do some carpentering jobs, and the plaintiff thereupon directed one of their men to go accordingly ; but the said W. P. overhearing what passed desired their foreman P. not to let the man go, and the plaintiff then inquiring of the said W. P. what he meant by such conduct, the said W. P. answered that he did not choose the man should go, and that the plaintiff had better go about his business and not come there, and that none of the men should do anything he ordered them to do, and the said W. P. added some terms of opprobrium and abuse of the plaintiff ; and the said W. P. then ordered C., their clerk, to keep the books himself, and to lock up the safe in order that the plaintiff might not have access to them ; and the plaintiff having a pass key to the lock of the safe door, and to other locks on the partnership premises, the said W. P. caused the locks to be changed. And the plaintiff further showeth that being compelled by such conduct on the part of the said W. P. to absent himself from the partnership business, the plaintiff forthwith took other premises in — in the name of the partnership firm for the purpose of carrying on business there on the joint account of the said W. P. and himself pursuant to the aforesaid articles of partnership ; but the plaintiff at the same time considering it to be desirable that a dissolution of the partnership should be effected, if it could be done upon fair and reasonable terms, the solicitors of the plaintiff, at his request, on or about, &c., wrote and sent a letter to the said W. P. in the words and figures or to the purport and effect following ; that is to say, — "Sir, in consequence," &c.

And the plaintiff further showeth, that the said W. P. hath taken no notice of the said letter, nor hath since in any manner communicated with the plaintiff, and the plaintiff hath from thence continued to carry on business in the partnership name and on the partnership account in the said new premises in —, but hath at all times been and is now willing and desirous to attend to the partnership business if requested or permitted so to do by the said W. P.

And the plaintiff humbly insists that the said W. P. ought to come to an account of the partnership dealings and transactions from the commencement thereof, and that the said W. P. ought to be restrained by the injunction of this honorable Court from receiving and collecting the partnership debts and moneys due or to accrue due; and that some proper person ought to be appointed by this honorable Court to receive and collect the same; and that proper directions ought to be given by this honorable Court for the conduct and management of the said partnership business in future for the joint and equal benefits of the said W.

P. and the plaintiff. To THE END. [See form No. 37, p. 1884.]

* 1946 * And that the said defendant may answer the premises and that an account may be taken of all and every the said copartnership dealings and transactions from the time of the commencement thereof; and also an account of the moneys received and paid by the plaintiff and the said defendant respectively in regard thereto, the plaintiff being ready and willing, and hereby offering to account for the partnership dealings and transactions which have been carried on by the plaintiff in the premises in —— aforesaid; and that said defendant may be decreed to pay to the plaintiff what upon the taking of the said accounts shall appear to be due to him. And that in the mean time the said defendant W. P. may be restrained by the order and injunction of this honorable Court from collecting or receiving any partnership debts or other moneys, and that some proper person may be appointed to collect and receive the same; and that proper directions may be given for the conduct and management of the said partnership business in future, for the joint and equal benefit of the plaintiff and the said W. P. [And for further relief, see form No. 38, p. 1885.]

33. Bill for a dissolution of a partnership between auctioneers, and for an injunction to restrain one of the defendants from collecting debts.

To, &c.

Humbly complaining showeth unto your honors, the plaintiff, P. C., of, &c., that in or about the month of ——, the plaintiff entered into an agreement with C. B., of, &c., and C. F., of, &c., the defendants herein-after named, to form a partnership with them in the business of auctioneers and appraisers, which agreement was reduced into writing, and signed by the plaintiff and the said defendants, and was of the following purport and effect, viz. [*stating the same*], as in and by the said agreement, reference being thereto had, will appear. And the plaintiff further showeth that the said copartnership business was entered upon, and hath ever since continued to be carried on by the plaintiff and the said defendants in pursuance of and under the aforesaid agreement, no articles or other instrument having ever been prepared and executed between them. And the plaintiff further showeth that having much reason to be dissatisfied with the conduct of the said C. B., and being desirous, therefore, to dissolve the said partnership, the plaintiff, on or about ——, caused a notice in writing, signed by the plaintiff, to be delivered to the said C. B. and C. F., as follows, viz.: "In conformity," &c., &c., as in

and by such written notice, now in the custody or power of the said defendants, or one of them, when produced, will appear. And the plaintiff further showeth that the said C. B. has from time to time, since the commencement of the said partnership, applied to his own use from the receipts and profits of the said business, very large sums of money, greatly exceeding *the proportion thereof to which he was entitled, and in order to conceal the same, the said C. B., who has always had the management of the said copartnership books, has never once balanced the said books. And the plaintiff further showeth that, having in the beginning of the year — discovered that the said C. B. was greatly indebted to the said copartnership, by reason of his application of the partnership moneys to his own use, the plaintiff, in order to form some check upon the conduct of the said C. B., requested that he would pay all copartnership moneys which he received in to his bankers, and would draw for such sums as he had occasion for; but the said C. B. has wholly disregarded such request, and has continued to apply the partnership moneys received by him, to his own use, without paying the same in to the bankers, and has also taken to his own use moneys received by the clerks, and has by such means greatly increased his debt to the partnership, without affording to the plaintiff and the said C. F. any adequate means of ascertaining the true state of his accounts. And the plaintiff further showeth that he has, by himself and his agents, from time to time applied to the said C. B., and has requested him to come to a full and fair account in respect of the said copartnership transactions, with which just and reasonable requests the plaintiff well hoped that the said defendant would have complied, as in justice and equity he ought to have done. BUT NOW SO IT IS, &c., the said defendant C. B. absolutely refuses so to do, and he at times pretends that he has not received and applied to his own use more than his due proportion of the partnership profits; whereas the plaintiff charges the contrary thereof to be truth, and so it would appear if the said C. B. would set forth a full and true account of all and every his receipts and payments in respect of the said partnership transactions, and of the gains and profits which have been made in each year since the commencement of the said partnership. And the plaintiff charges that the said C. B. has in fact received the sum of \$ — and upwards beyond his own proportion of the partnership profits, and that he is nevertheless proceeding to collect in the partnership debts and moneys, whereby the balance due from him will be increased to the great loss and injury of the plaintiff and the said C. F. And the plaintiff charges that the said C. B. ought therefore to be restrained by the order and injunction of this honorable Court from collecting and receiving any of the said partnership debts and moneys. And the plaintiff charges that the said C. F. refuses to join the plaintiff in this suit. All which actings, &c.

And that the said defendants may answer the premises; and that the said copartnership may be declared void, and that an account may be taken of all and every the said partnership's dealings and transactions from the time of the commencement thereof, and also an account of the moneys received and paid by the plaintiff and the said defend-

* 1948 ants * respectively in regard thereto ; and that the said defendants may be decreed to pay to the plaintiff what, if anything, shall, upon the taking of the said accounts, appear to be due to him, the plaintiff being ready and willing, and hereby offering to pay to the defendants or either of them what, if anything, shall, upon the taking of the said accounts, appear to be due to them or either of them from the plaintiff ; and that in the mean time the said defendant C. B. may be restrained by the order and injunction of this honorable Court, from collecting or receiving the partnership debts or other moneys. [And for further relief, &c.] May it please, &c.

Pray subpoena against C. F., and

Subpœna and injunction against C. B.

34. *Prayer in a bill seeking an account of partnership dealings, Receiver and injunction. [Modern English Form.]*

1. That an account may be taken by and under the decree and direction of this honorable Court, of all the said partnership dealings and transactions between the plaintiff and the defendant, and that what shall appear thereon to be due from the defendant may be decreed to be paid by him.

2. That a proper person may be appointed to receive, collect, and get in all the outstanding debts and moneys due to or on account of the said partnership business or concern, and also to take possession of all the effects and property of or belonging to the said partnership.

3. That the defendant may be ordered to deliver up to such person all the effects and property of or belonging to the said partnership in his possession or power, and also all books of account, accounts, receipts, vouchers, and papers of or belonging to the said partnership; and that the defendant may be restrained, by the order and injunction of this honorable Court, from demanding, receiving, or obtaining possession of any debts, moneys, or property due or belonging to the said partnership; and also from in any manner intermeddling with the books, papers, bills, or accounts of the said partnership; and that the said effects and property of or belonging to the said partnership may be sold and converted into money by and under the direction of this honorable Court.

4. That out of the share of the defendant in the produce thereof, what shall be found due to the plaintiff in respect of the moneys of the partnership so improperly applied by the defendant as aforesaid, may be made good to the plaintiff.

5. That all such further directions as may be necessary may be given.¹

¹ See form of order for the sale of partnership property, and for a Receiver, in Wilson v. Greenwood, 1 Swanst. 483. As to the joint and separate assets, in case of a bankruptcy or death of one of two partners, see Butchart v. Dresser, 4 De G. M. & G. 542; Ridgway v.

Clare, 19 Beav. 111. And as to appointing a Receiver at the instance of the solvent partner against the assignees of bankrupt partner, Freeland v. Stansfeld, 2 Sm. & G. 479; 1 Jan. N. S. 8.

- * 35. *Prayer of a bill filed after a dissolution of partnership between ironmongers, the defendants having agreed to exonerate the plaintiffs from the payment of the debts, — the plaintiffs pray that an account may be taken of the debts due from the firm, and remaining unpaid, that the defendants may be declared answerable for the amount thereof, and that the plaintiffs may be declared to have a lien for the same on the partnership stock and premises, and if necessary for a sale thereof, in satisfaction for such debts; also, for an injunction to restrain the defendants from selling the partnership stock, &c., and that a covenant entered into by the plaintiffs, restraining them from carrying on the trade within forty miles, may be reformed, according to the agreement of the parties.*

And that an account may be taken of all and every the debts and demands which were due from the plaintiffs and the said P. J. B. in their partnership firm of —, or in respect thereof at the time of executing the said indenture of the — day of —, and which have not been paid and satisfied by the said P. J. B. or the said other defendants, and that the said several defendants may be declared answerable for the amount of what shall be found due on such account. And that it may also be declared that the plaintiffs have a lien to the amount of what shall be found due on such account upon the partnership stock, premises, debts, and effects, which were assigned by the plaintiffs to the said P. J. B. in consideration of his engagement to exonerate the plaintiffs from the payment of such debts; and that, if necessary, the said partnership stock, premises, and effects may be sold and applied in satisfaction of such debts under the decree of this honorable Court, and that all proper directions may be given in that behalf. And that the defendants may in the mean time be restrained, by the injunction of this honorable Court, from selling, assigning, or disposing of the said partnership stock, premises, and effects, and that the said covenant in the said indenture of the — day of —, whereby the plaintiffs are restrained from engaging in or carrying on any part or branch of making or manufacturing iron under any modification whatsoever, or any articles or utensils made of iron, within forty statute miles of —, may be reformed according to the intent and agreement of the partners respecting the same as aforesaid. [And for further relief.]

- * 36. *Bill by surviving partner, against the administrator, widow, and heirs of the deceased partner, claiming certain real estate which had been purchased with funds of the partnership, as partnership property.¹*

To the Judges of the Circuit Court of the United States for the District of Massachusetts.

M. K., of M., in the State of New Hampshire, and a citizen of said New Hampshire, stone-cutter, brings this his bill against T. G., of C.,

¹ Kelley v. Greenleaf, 3 Story, 93; see Dyer v. Clark, 5 Met. 562.

in the county of M. and Commonwealth of Massachusetts, merchant, the administrator of the goods and estate of O. H., late of said C., stone-cutter, and a citizen of Massachusetts, deceased; N. H., of said C., widow; H. O. H., and S. S. H., both minors, under the age of twenty-one years, residing with their mother, said N. H., at said C.; J. F., of M., in said county of M., gentleman; F. P., of B., in the county of S., and Commonwealth aforesaid, clerk; and E. H. D., of said C., merchant: all citizens of the said Commonwealth of Massachusetts.

And thereupon your orator complains and says, that on or about the twenty-second day of January, A. D. 1834, one O. H., then of said C., but now deceased, and your orator, entered into copartnership together, under the firm of H. & K., as stone-cutters, for the purpose of carrying on business as dealers and workers in hammered and other stone, for buildings and other purposes, on joint account, and upon an equal division of profits, and they then contributed the sum of five hundred dollars each, to form a capital stock to start with, and they continued to carry on business together, as such general partners, at said C., from said date up to the twenty-second day of December, A. D. 1841, when said partnership was dissolved by the death of said O. H., as herein-after stated; — that in the course of their partnership transactions and dealings, previously to the first day of January, A. D. 1839, your orator and said O. H., as such partners, became possessed of and owned divers copartnership property and assets, consisting of stone, tools, notes, accounts, five-eighth parts of a certain sloop or vessel, called the Almira, of C., a certain parcel of land situate on the easterly side of C. Square, in said C., bounded, &c. [*description and boundaries*], and a certain parcel of land situate in C. Street, in the city of B., bounded, &c. [*description and boundaries*], and your orator further shows, that both said parcels of land were purchased by your orator and said O. H., with their copartnership funds, and on account and for the use of the copartnership, and the same were originally and always intended by your orator and said O. H. to be held, enjoyed, and managed as part of their copartnership stock; and in the year 1837, your orator and said O. H., having then a large quantity of building granite stone on hand

belonging to the firm, concluded, upon consultation together, as *1951 the most *advantageous way of using said stone, for the benefit of the concern, to erect a granite stone building, for a store and offices, upon said land in C. Square, on the copartnership account, and out of the copartnership funds, and for the benefit of the concern; they accordingly, and in pursuance of said determination, did thereupon build said building on said land, out of and with their copartnership funds and property, intending the same to constitute a part of their joint copartnership stock and property, and have ever since held and enjoyed, and considered the same as part of their joint copartnership stock and property.

And your orator further shows, that on the first day of January, A. D. 1839, your orator and said O. H., upon taking an account of their copartnership stock and property, as it then was, being the original stock and all accumulations thereon, estimated and set down the same as fol-

lows, to wit: The said land and stone building on the easterly side of C. Square, at six thousand dollars; the said land in C. Street, at two thousand dollars; the said sloop Almira (or their interest therein), at one thousand dollars; stock and tools at their stone-yard, at twelve hundred dollars; cash on hand, including notes and accounts due them, at sixteen hundred dollars; two certain notes of one C. E., at two hundred and seventy-two dollars, — in all, the sum of twelve thousand and seventy-two dollars; and the same real and personal estate was then declared, in writing, by said O. H. and your orator, to be the copartnership stock and property of the concern of which said O. H. and your orator were equal owners, share and share alike.

And your orator further shows, that the said O. H. had, from the first, and continued until at or about the time of his death, to have the sole charge and management of all the financial affairs of the concern, receiving all the money, and making all the payments, keeping the books and accounts, and having charge of the papers of the firm, and the general care of all its property and concerns, except as to the stone and tools in the stone-yard, and the care and management of the work there, and the execution of the jobs and contracts there, which had been undertaken by the firm, to which department your orator gave his entire attention, from the commencement of the partnership until its dissolution; and on said first day of January, 1839, upon the occasion of the taking said account of their partnership property and affairs, and after declaring what their partnership stock consisted of, as above stated, and upon settling, each with the other, as to the moneys drawn out by each respectively, for their own use, up to said date, said O. H. undertook and agreed, in writing, under his hand and seal, with your orator, that he, said O. H., would, from his own means, and without impairing your orator's interest in said copartnership property above specified, pay and discharge all debts and demands, of every nature, then due and owing from said partnership, when the same became payable, and * would save your * 1952 orator harmless from all such debts and demands, excepting that any contracts for work and materials, or any other thing connected with the business of the firm, made in the year 1838, and to be performed after said first day of January, 1839, should be paid or discharged by the copartnership.

And your orator further shows, that from and after said first day of January, 1839, your orator and said O. H. continued their joint business as before, with their said capital stock, composed of and consisting in said real and personal estate above specified, and on or about the second day of February, 1840, being in want of the sum of \$1500, for their copartnership uses and purposes, they borrowed the same sum upon their copartnership account, from said J. F., upon a mortgage of their said land and building in C. Square, made to said J. F., as guardian of one N. F., a minor, to secure the joint and several note of your orator and said O. H., of that date, payable in three years, with interest semi-annually, and all the money so borrowed was received by said O. H., on account of the firm, in the same manner as all other funds arising from their copartnership business; and the whole semi-annual interest, which

became payable during said O. H.'s life, on said mortgage note, has been paid by him out of the copartnership funds, and charged in the company's books, as a debt of the concern. And your orator has been informed and believes, and therefore states the fact to be, that said J. F. has transferred and assigned said note and mortgage to said F. P., who now holds the same; but when said assignment was made, or for what consideration, or whether the same was absolute or conditional, your orator is not informed, and cannot now state.

And your orator further shows, that said O. H., as the managing partner of said firm of H. & K., between the said first day of January, 1839, and the twenty-second day of December, 1841, received and had on the said firm's account, and to their use, divers copartnership moneys, to the amount of \$48,400, and upwards, as near as your orator has been able to ascertain the same, and during the same time paid out, in payment of the copartnership debts and liabilities and for copartnership purposes, the sum of \$37,361.09, and no more, as near as your orator has been able to ascertain the same; but whether any part of said last-named sum, and if any, how much, was paid out by said O. H. to discharge debts due before January 1, 1839, which said O. H. was bound to discharge out of his own means, your orator is not now informed, and cannot now state with certainty, except as to two small debts, amounting together to \$65, which your orator has been obliged to pay since his decease. That during the same time, your orator received and drew out of the concern, for his own use, the sum of \$1422.98, and no more, the same being handed to him, at sundry times, by said O. H., and charged to your orator in the books, except the sum of \$266, which does not appear to be charged; and that the residue of said * 1953 copartnership * moneys, upwards of \$9600, so received by said O. H., remains due from and unaccounted for by him to the concern.

And your orator further shows, that the said O. H. died at said C., on the twenty-second day of December, 1841, intestate, leaving a widow, said N. H., and only two children and no issue of any deceased child surviving him, viz., said H. O. H. and said S. S. H., both minors, of tender years; that said T. G. was afterwards duly appointed the administrator of said O. H., deceased, and duly accepted, and took upon himself that trust.

And your orator further shows, that upon the death of said O. H., and the dissolution of the partnership between him and your orator consequent thereon, the joint debts, due from said firm to others, amounted to upwards of the sum of \$7400, as near as your orator has yet been able to ascertain, exclusive of the claim of your orator upon the firm; — that the copartnership assets at the same time consisted of certain stone and tools, then in the stone-yard or wharf occupied by them at C., estimated and valued at \$1300; five-eighth parts of the sloop Almira, estimated at \$937⁵⁸₁₀₀; divers accounts and notes; and said real estate in C. Square and in C. Street; and said balance of copartnership moneys in the hands of said O. H., as above stated; — that the above estimates and valuations were made upon and affixed to said stone and tools, and

said five-eighth parts of said sloop Almira, respectively, by said T. G., as administrator of said O. H., soon after his appointment, and your orator ; — and the same were to be and have been disposed of and converted into cash by your orator at the above rates, with the concurrence of said T. G. ; — that your orator, as surviving partner, proceeded without delay, and with all fidelity, to realize the cash from said stone and tools, and said interest in said sloop, and to collect said notes and accounts, so far as he could, and has realized from said sources the sum of \$5480⁸⁴₁₀₀, and no more ; — and at the same time your orator has paid, and discharged, and liquidated, since the death of said O. H., copartnership debts of said late firm to the amount of \$5729¹⁴₁₀₀, among which were some debts, amounting together to \$65, that should have been paid by said O. H. exclusively, according to his said undertaking of January 1, 1839.

And your orator further shows, that there are still divers debts due from, and demands against, said late copartnership, which he has not been able to discharge, out of said partnership property or otherwise ; and there is also a large balance justly due and payable to him, out of said partnership property, on a just settlement of the copartnership concerns, for which said copartnership property is and should be holden to him, before the administrator, or heirs, or widow of said O. H., in justice and equity ought to have any portion thereof ; but inasmuch as the title to one undivided half of said copartnership assets in real estate is now, by the strict rules of the Common Law and the form of the conveyances of the said two parcels of land to your orator and said O. H., * in the said two children of said H., who are his heirs-at-law, * 1954 and the same is also at Law, subject to his said widow's right of dower therein, your orator cannot, without the aid of a Court of Equity, to wind up the partnership concerns and distribute the assets, as to justice and equity shall appertain, make said partnership property, now existing in the shape of real estate, available for the payment of the said partnership debts now outstanding, nor the payment of your orator's own just claims thereon. Neither has your orator received anything from the private estate of said O. H. since his decease ; nor can he collect anything therefrom, as the same is supposed, by his said administrator (as your orator is informed and believes), to be insolvent.

And your orator further shows, that said O. H., in or about the month of April, 1839, without any concert with your orator, and without his previous knowledge, and (as your orator supposed when he learnt the fact) on his, said H.'s own private account, purchased a lot of land in said C., situate, &c. [*description and boundaries*], and took the conveyance thereof in his, said O. H.'s, own name ; and afterwards erected a dwelling-house thereon, which he occupied himself, down to the time of his death. But instead of paying for the same out of his own private means, your orator has since discovered that said O. H., wrongfully, and without the knowledge of your orator, and in fraud of your orator, applied the copartnership funds of the firm to the whole payment for said land, and the whole cost of building of said house, concealing the same from your orator. That your orator discovered said misappropriation and misuse of the partnership funds, by said O. H., during his last

sickness, and shortly before his death; and your orator has also been informed and believes, and accordingly states the fact to be, that said O. H., shortly before his death, stated and declared, that said dwelling-house and premises belonged in truth as much to your orator as to himself; that it was built out of the firm's money, or words to that effect;—and your orator, upon taking the papers and documents belonging to the firm into his possession, after said O. H.'s death, found the deed of said land, on which said dwelling-house was built, filed with the deeds of said land in C. Square and in C. Street, and the other papers and documents of the firm, in the desk where they had been placed and were kept by said O. H.

And your orator further shows, that he has been informed, and believes, and accordingly states, that said E. H. D. claims to hold a mortgage upon said dwelling-house and premises near B. Street, made to his father, E. D., deceased, whose administrator he is, by said O. H., to secure the payment of a private debt of said O. H.'s to said E. D., of one thousand dollars; but when said mortgage was made, and for what consideration, and any other particulars respecting the same, and whether said E. D. had, at the time he took said mortgage, any notice or

knowledge that said land was paid for, and said house built from

* 1955 * the copartnership funds of said H. & K., so wrongfully used and misapplied by said O. H., in fraud of your orator, your orator does not know, and cannot state with certainty; but prays that said E. H. D. may, in his answer, make full discovery and disclosure thereof, and concerning the same.

And your orator well hoped that no dispute or difficulty would have occurred respecting the settlement of the said copartnership concerns, but that said real estate on C. Square, and said land in C. Street, as well as said dwelling-house and land near B. Street, might all have been sold and converted into cash, and the proceeds taken by your orator, as surviving partner of said firm, as part of the copartnership property, so that your orator could have paid all the copartnership debts, and have liquidated and adjusted and wound up all the copartnership concerns, without invoking the aid of this honorable Court. But, by the form of the conveyances to said late firm of H. & K., of the said land on C. Square, and said land in C. Street, the legal title to one undivided half thereof was, during said O. H.'s life, vested in him in fee at Law, and upon his death the same descended, subject to his widow's dower therein, to his said two children; although, in equity and in truth, the said O. H., during his lifetime, held the said undivided half of said lands, as trustee for the firm, and the same descended, subject to said trusts, to his heirs; and the legal title to the said dwelling-house and land near B. Street was wholly vested in said O. H. during his lifetime, and the same, upon his death, descended at Law, subject to his widow's dower, to his said heirs, although the same in equity and good conscience belonged to the said firm, and said O. H. was in truth but the mere trustee thereof for the firm. And the said H. O. H. and S. S. H., the children and heirs-at-law of said O. H., deceased, are both minors of tender years, and incapable of conveying the title to said real estate to your orator, as surviving

partner of said firm, for the purpose of enabling him to wind up, adjust, liquidate, and settle the copartnership concerns, if they were disposed so to do.

And your orator further shows that the said T. G., the administrator of said O. H., claims, or has claimed, that the one undivided half of the said estate on C. Square, and of said land in C. Street, and the whole of said dwelling-house and land near B. Street in C., are the private estate of said O. H., and threatens, or has threatened, to sell the same for the payment of the private debts of said O. H., to the exclusion of the paramount rights of your orator and the creditors of the firm, to have the same treated and applied as partnership assets. And said N. H. claims that, as the widow of said O. H., deceased, she is entitled to dower in all the said real estate whereof her husband was seised at Law during his life; and threatens to take measures to have the same set out to her. And your orator has reason to apprehend that said T. G., as such administrator, * will proceed to apply to the Probate Court for * 1956 the county of M., for license to sell said real estate for the payment of said O. H.'s private debts, and will apply the proceeds of such sales to that purpose; and that said N. H. will proceed to seek to have dower set out to her in said estates; and that said real property, so in justice and equity the copartnership property and assets of said late firm of H. & K., will be diverted from your orator and the creditors of said firm.

To the end, therefore, the said defendants may, if they can, show why your orator should not have the relief hereby prayed; and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make, to such of the several interrogatories hereinafter numbered and set forth, as by the note hereinafter written they are respectfully required to answer, that is to say, —

1. Whether, &c.
2. Whether, &c.
3. Whether, &c.

And so on, 45 interrogatories.

And the said land and building in C. Square, and said land in C. Street, and also said land and dwelling-house near B. Street, may be adjudged and decreed to be partnership property and assets of the said late firm of H. & K., and that the same may be ordered to be sold, under the direction of this honorable Court, for the purpose of winding up the concern, and that a receiver of all the copartnership assets and property now unadministered, by your orator, may be appointed, and that proper and just accounts may be taken between the parties, touching the matters in question, and that said O. H.'s estate may be charged with a fair rent for said dwelling-house, during the time it was in his occupation, and for such further time, if any, as may seem meet to your honors, and that all the affairs and concerns of said late firm of H. & K. may be wound up, adjusted, and closed, under the direction of this honorable Court, and after payment of all the debts of the con-

cern, and the partnership balance which may be found due to your orator out of the assets, that the surplus may be divided between your orator and the administrator or heirs of said O. H., according to their respective rights therein, and as to justice and equity may appertain; and that, in the mean time, said administrator, widow, and heirs of said O. H. may be restrained and enjoined from proceeding to take any measures to sell said real property or interest therein, or to have any dower set out therein to the said widow, or from any proceeding touching said real estate, or any of it, adverse to the interests and claims of your orator, until the relative rights and interests therein, of your orator

and the said defendants, may be settled and determined; and that

* 1957 your * orator may have such further and other relief in the premises as the nature of his case shall require, and as to your honors shall seem meet.

May it please your honors to grant unto your orator not only a writ of injunction, firmly restraining and enjoining said T. G., the administrator, and said H. O. H. and S. S. H., the heirs, and said N. H., the widow of said O. H., deceased, from taking any measures to sell said real estate, or any part thereof, or any interest therein, or to have any dower set out therein, or in any part thereof, until the relative rights and interests of your orator and said defendants in said real estate, may be settled and determined; but also, &c. [Pray subpoena directed to said T. G., N. H., H. O. H., S. S. H., J. F., F. P., and E. H. D.]

M. K.

G. & E., *Solicitors.*

The defendants T. G., N. H., H. O. H., and S. S. H. are required to answer all the interrogatories numbered 1 to 42, both inclusive.

The defendant N. H. is required also to answer the interrogatories numbered respectively 43 and 45.

The defendant T. G. is required also to answer the interrogatory numbered 44.

The defendant J. F. is required to answer the interrogatories numbered respectively 18 and 19.

The defendant F. P. is required to answer the interrogatory numbered 19.

The defendant E. H. D. is required to answer the interrogatory numbered 40.

SECTION XI.

Relating to an Agent.

37. *Bill against an agent for mismanagement.*

To the Judges of the Circuit Court of the United States for the District of Massachusetts.

W. D., the younger, of the city, county, and State of New York, merchant, and a citizen of said State, brings this, his bill, against N. W.

1954

the younger, and A. S., merchants and copartners doing business in B., in the State of Massachusetts, under the firm of N. W., Junior, & Company, and citizens of the State of Massachusetts.

And thereupon your orator complains and says, that, in the month of January, A. D. 1856, he was the owner of a certain ship or vessel called * the Mastiff, then lying in the port of B., bound on a *1958 voyage to S. F., in the State of California, and that being desirous to procure a cargo of goods and merchandise to be carried to said S. F., in said vessel on freight, he applied to said W. & S. who were engaged in that line of business, to obtain a cargo for said vessel on freight, and, as a compensation for their services in so doing, agreed to pay them a commission of five per centum on the amount of the freight and primage of such goods and merchandise as they should procure to be shipped on board of the said ship, in consideration of which they agreed to act as his agents in the premises, and to make use of their knowledge, skill, and ability to procure a full cargo for said vessel on freight, — and that accordingly the lading and procurement of freight were intrusted to them, and in the said month of January, and the ensuing months of February and March, they did procure a cargo for said vessel, and in the month of March she set sail and departed on her voyage for said S. F.

That on or about the seventeenth day of said March, said W. & S. sent to your orator a freight list, or statement of the amount of merchandise laden on board of the said vessel, and of the rates of freight thereof, and of the sums of money to be earned and paid on the carriage and delivery thereof at said port of S. F. (which said freight list your orator prays leave to file in Court as a part of this bill); by which it appears that all the merchandise laden on board of the said ship was shipped at specific rates of freight therein set down, and that the total amount of freight, including primage, was the sum of twenty thousand and one dollars and twenty cents, upon which sum the said W. & S. claimed of your orator, and he paid to them a commission of five per centum, amounting to the sum of one thousand and five dollars and six cents, together with other charges for advertising and so forth, as by their bill herewith also filed, in the full belief, and relying on the assurance of the said W. & S. made by sending him the said freight list and otherwise, that the merchandise therein mentioned had been actually laden on board of the said vessel, to be carried and delivered at and for the rates of freight therein specified.

That the said ship was consigned to certain persons doing business at said S. F., under the firm of C. & D., who, upon the arrival of said vessel in the month of ——, 1856, attended to the unlading and discharge of the cargo, the collection of the freight and the remittance thereof to your orator. That upon such discharge and delivery, it appeared that fifty-seven $\frac{1}{2}$ tons of pig-iron, which in the said freight list were specified as shipped at the rate of ten dollars per ton, and the freight of which was therein stated to amount to five hundred and seventy-seven $\frac{1}{2}$ dollars, and one hundred and thirty-three nests tubs, two hundred nests tubs, and seventy-five dozen pails, which in said

* 1959 freight list were specified as shipped at and for the freight or compensation * of five hundred and ten dollars, were not shipped at such rates of freight, but the rate of freight specified therefor in the bills of lading thereof (which were not signed by the master of said ship, but by the said W. & S., who assumed to act as his agents in that behalf without his knowledge or consent) was "*one half net profits over costs and charges;*" that the said iron, tubs, and pails, as your orator is informed and alleges, could not be sold at any profit, and that the said C. & D. did not collect, and your orator has not received, any freight or compensation for the carriage and delivery thereof at said S. F.

That, upon receiving information from the said C. & D. of the fact that said iron, tubs, and pails were shipped on half profits instead of the rates of freight stated in said freight list, your orator immediately advised the said W. & S., that he held them responsible for the amount of freight at which they had represented that the same were shipped, and upon which they had charged and been paid their full commission, and requested payment thereof, which they refused to make.

That the commission, agency, and trust, for which your orator retained said W. & S., was to procure a cargo for said vessel to be carried and delivered on payment of freight in money at specified rates, and not upon half profits; that the said W. & S. represented to your orator that they had obtained and shipped a cargo, upon the delivery of which your orator would be entitled to receive the sums of money as freight therefor specified in the said freight list; that said W. & S. demanded of your orator a commission on the amount thereof, as so shipped, and that your orator paid them said commission, in the full belief and relying upon their assurance, contained in said freight list, that the various articles therein mentioned were shipped at the rates of freight therein specified, and that upon the safe delivery thereof your orator would be entitled to receive the same in money.

That the said iron, tubs, and pails were safely carried to S. F. and delivered to the consignees thereof, and that upon such delivery your orator had earned and was entitled to be paid for such service the rates of freight and sums of money specified in the said freight list, the same being the usual and current rates of freight, upon the amounts of which, as such, the said W. & S. charged their commissions as aforesaid;— that by reason of their undertaking to carry and deliver the same upon half profits instead of on freight, your orator has lost the sums of money to which he should have been entitled and to which the said W. & S. represented that he would be entitled on the delivery thereof, and has not received and is not entitled to claim, by reason of their said doings, any compensation from the owners or consignees of the said goods and merchandise for the cost and expense of their transportation and delivery;— and that by reason of the premises, and of the representation made that the said goods and merchandise were

* 1960 * shipped at the rates of freight specified in the said freight list, the said W. & S. are bound to make good the loss your orator has suffered by their said doings, and to pay to him the sums of

money which he would have received if the said goods and merchandise had been shipped at the rates specified in said freight list, and your orator has repeatedly requested them so to do.

But now, so it is, may it please your honors, that the said W. & S absolutely refuse to comply with such request.

To the end, therefore, that they, the said W. & S., may be decreed to pay to your orator the said sums of five hundred and seventy-seven ~~180~~ dollars, and five hundred and ten dollars, and such losses, damages, and interest as your orator has suffered by reason of the premises, and that your orator may have such other relief as the nature of his case may require, and that the said W. & S. may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several corporal oaths, and to the best of their knowledge and belief, make answer to all and singular the premises.

May it please your honors to grant unto your orator a writ of *sub-pæna*, directed to the said N. W., the younger, and A. S., commanding them at a suitable time and place to appear before your honors to make answer to the premises, and to abide by and perform such order and decree as to your honors shall seem meet.

F. C. L.
Solicitor.

38. Prayer for an account in a bill by principal against an agent.

1. That an account may be taken of all sums of money received by, or come to the hands of, the defendant, as such agent of the plaintiff as aforesaid, for or on account, or for the use of, the plaintiff, and of the application thereof; and of all dealings and transactions of the defendant, as the plaintiff's agent; and that the defendant may be decreed to pay to the plaintiff what, on taking such accounts, shall be found due from the defendant to the plaintiff; and to deliver up to the plaintiff all documents in the defendant's possession or power belonging to the plaintiff.

2. That the defendant may pay the costs of this suit.

* 1961

* SECTION XII.

Bills to cancel¹ or to rectify and reform Agreements, Bonds, and other Instruments.²

39. *Bill by lessee to have an agreement delivered up to be cancelled, by which he gave up the remainder of his lease, contrary to his intention, he not being able to read or write; praying also to have the original lease confirmed, — also for an account or re-payment of the land-tax paid by the plaintiff, and for an injunction to restrain the defendant from proceeding in an action of ejectment commenced by him.*

Humbly complaining, sheweth unto your honors, the plaintiff, W. A., of, &c., that on or about —, a certain indenture of lease was made

¹ It must now be considered as settled that Courts of Equity have jurisdiction to remove a title or claim which may operate as a cloud upon the title of the owner, and from which an injury to him might reasonably be feared, and for that purpose may decree that the deeds or other instruments by which such cloud is created, shall be given up and cancelled. Tucker v. Kenniston, 47 N. H. 267; Sheafe v. Sheafe, 40 N. H. 516; Tappan v. Evans, 11 N. H. 327; Bay State Iron Co. v. Goodall, 39 N. H. 293; Hamilton v. Cummings, 1 John. Ch. 516; Pellet v. Shephard, 5 Paige, 493; Tieman v. Austin, 33 Barb. 9; Kay v. Scates, 27 Penn. St. 31; Kimberley v. Fox, 27 Conn. 307.

The assignees of an insolvent debtor, who are in possession of personal property belonging to his estate, upon which he has given a mortgage the validity of which they deny, may maintain a bill in Equity against the mortgagee to obtain a decree that the mortgage be given up and cancelled. Sherman v. Fitch, 98 Mass. 59. So the assignee of an insolvent debtor was allowed to bring a bill in Equity to set aside an execution levied upon land in which the debtor owned a reversion. Hall v. Whiston, 5 Allen, 126; see Martin v. Graves, 5 Allen, 601; Pierce v. Lamson, 5 Allen, 60; Clouston v. Shearer, 99 Mass. 211. The Court will set aside an assignment void at Law, and necessarily leading to fraud and corruption. Arden v. Patterson, 5 John. Ch 44.

The application for this species of relief is by a bill *quia timet*, and is addressed to the sound discretion of the Court upon the circumstances of the particular case, and the relief will ordinarily be afforded where injury may reasonably be apprehended, and it is made to appear that the retaining of the title or claim is clearly against conscience. The same principle will authorize the interference of a Court of Equity to prevent the acquiring of such title or claim, where it at once will become a cloud

upon the title of the owner, and injurious to him, and at the same time would be against conscience to hold it; and the cases are numerous where this power has been exerted. Tucker v. Kenniston, 47 N. H. 270, 271; Pellet v. Shephard, 5 Paige, 493; Scott v. Onderdonk, 14 N. Y. 9; Lounsbury v. Purdy, 18 N. Y. 515; Shattuck v. Carson, 2 Cal. 588; Guy v. Hernance, 5 Cal. 73; Dean v. Madison, 9 Wis. 402; Lewen v. Stone, 3 Ala. 485; Commercial Mut. Ins. Co. v. McLoon, 14 Allen, 351; see Phillips v. Thomas, 62 L. T. 793.

In the case of real estate where the defendant is in possession, the plaintiff has generally a complete and adequate remedy at Law, and cannot resort to Equity. Thayer v. Smith, 9 Met. 469; Woodman v. Saltonstall, 7 Cush. 181; Pratt v. Pond, 5 Allen, 59; Spurr v. Benedict, 99 Mass. 463; but see Hubbell v. Carrier, 10 Allen, 333.

² See Druiff v. Lord Parker, L. R. 5 Eq. 131; Graham v. Berryman, 19 N. J. Eq. 29. A mortgage was reformed under a bill to foreclose, by substituting "heirs" for "successors." McMillan v. N. Y. Water-Proof Paper Co. 29 N. J. Eq. 610; Randolph v. N. J. West Line R. R. Co. 28 id. 49. But a mortgage cannot be rectified after foreclosure: Rutgers v. Kingsland, 3 Halst. Ch. 658; nor a policy of insurance after suit thereon and judgment against the plaintiff: Steinbach v. Relief Fire Ins. Co. 77 N. Y. 498; Washburn v. Great Western Ins. Co. 114 Mass. 175. A discharge of a mortgage, entered by mistake in the margin of the record thereof in the registry of deeds, may be set aside in Equity. Bruce v. Bonney, 12 Gray, 107.

If a grantor in a deed has orally agreed to warrant that a tract of land therein conveyed should amount to seven acres, or, if it should fall short, to pay for the deficiency at a certain rate per acre, and a deed is accordingly prepared for him to execute, containing a cove-

and duly executed between E. L., then of, &c., &c., &c., whereby the said E. L. did, &c. [stating the lease to the plaintiff], as in and by the * said indenture, to which the plaintiff craves leave to * 1962 refer, when produced to this honorable Court will appear. And the plaintiff further showeth, that he entered upon and possessed the said farm and lands under and by virtue of the said lease; and that the said E. L. departed this life in or about, &c., and that after his death, J. H., of, &c., the defendant hereinafter named, became, by purchase or otherwise, seised of or entitled to the possession of the said farm and land, subject to the said lease. And the plaintiff further showeth that no notice was ever given to the plaintiff to determine or make void the said lease at the end of —— years from the commencement of the said term of —— years thereby demised, pursuant to the proviso therein contained or otherwise, but upon the expiration of such —— years, the said J. H. proposed to the plaintiff to enter into a new agreement as to the said farm and lands, giving the plaintiff to understand that the interest of the plaintiff therein was determined. And the said J. H., upon that occasion, as he had frequently done before, expressed great friendship for the plaintiff, and declared that it was his wish and intention that the plaintiff should continue in possession of his said farm as long as he lived. And the plaintiff further showeth, that the plaintiff can neither write nor read, and that the plaintiff fully believing that his interest in the said lease was determined, and that the said defendant, who is a man of fortune, was dealing fairly by the plaintiff, and was not intending to take any advantage of him, the plaintiff consented to enter into the new agreement proposed by the said J. H.; and thereupon the said defendant caused such agreement to be reduced into writing by one M. B., and the plaintiff set his mark thereto, but the same was not read once or in any manner explained to him, and such agreement was in the words and figures or to the purport and effect following (that is to say): [*To remain one year and pay the land-tax, which he was not to pay by his lease*] as in and by said agreement, &c. And the plaintiff further showeth, that, confiding in the said J. H.'s professions of friendship for the plaintiff, and in his aforesaid declarations that it was his wish that the plaintiff should continue on his said farm as long as the plaintiff lived, the plaintiff proceeded to expend considerable sums of money in erecting new buildings upon the said farm and lands, and in other improvements thereof. And the plaintiff further showeth that in or about, &c., the said J. H. informed the plaintiff that he must either pay an advanced rent of \$—, or deliver up possession of the said premises. And the plaintiff having refused to comply with such unexpected and unjust demand, the said J. H., on or about, &c., caused the plaintiff to be served with a notice to quit the said farm on the — day of —. And the plaintiff further showeth

next to warrant the land to contain seven acres, or, if it should fall short, to refund to the grantee in proportion to the quantity and price, and the grantor fraudulently erases the whole of the covenant, and delivers the deed to the

grantee without informing him of the erasure, and thereby deceives him, a bill in Equity lies to reform the deed by inserting the covenant agreed upon. *Metcalf v. Putnam*, 9 Allen, 97.

that after he had received the said notice, the plaintiff having complained to one of his relations of the great hardship of being obliged to quit his farm after he had expended so much money in improving

* 1963 * it, in consequence of the said defendant's assurances that the plaintiff should continue on it during his life, and having, in the course of such conversation, mentioned his lease from the said E. L., his said relation desired to see that lease, and upon perusing the same read to the plaintiff the proviso therein contained, whereby it appeared that the said lease was not to determine at the end of the first — years, without — months' previous notice. And the plaintiff further sheweth that he has since, by himself and his agents, repeatedly applied to the said J. H. and requested him to deliver up the said agreement of the — day of — to be cancelled, and to confirm the said indenture of lease of the — day of —, and to return to the plaintiff the land-tax, which he has paid in respect of the said farm since the making of the said agreement, and which he was thereby bound to pay, although he was not liable to pay it by the said indenture of lease; with which just and reasonable requests the plaintiff well hoped that the said J. H. would have complied, as in justice and equity he ought to have done. BUT NOW SO IT IS, &c. And the said J. H. has commenced an action of — in the — Court, &c., &c., to obtain possession of the said premises. And the said defendant sometimes pretends that previously to the making of said agreement of the — day of —, the said defendant had fully explained to the plaintiff that the plaintiff was entitled to hold the said premises under the said indenture of lease, until the end of the term of — years therein mentioned, and that the plaintiff was desirous to surrender and determine the said lease. Whereas the plaintiff expressly charges the contrary thereof to be the truth, and that the said defendant never did in any manner explain to the plaintiff, or give him to understand that he was entitled to hold the said farm until the end of the said term of — years. And the defendant well knew at the time of making the said agreement of the — day of —, that the plaintiff would not have entered into the same if he had been aware of his rights under the said indenture of lease, and the said defendant for that reason concealed from the plaintiff that he had such rights. And the plaintiff charges that at the time of making the said agreement the plaintiff had not the advice or assistance of any person whatsoever, but acted therein according to the suggestions of the said defendant, supposing he meant to be kind toward him, and would deal fairly by him. All which actings, &c.

And that the defendant may answer the premises; and that the said agreement, bearing date the — day of —, may be decreed to be delivered up to the plaintiff to be cancelled; and that the defendant may confirm the said indenture of lease of the — day of —. And that an account may be taken of what the plaintiff has paid for land-tax of the said farm since the making of the said agreement, and that the defendant may be decreed to repay the same to the plaintiff; and

that in the mean time the defendant may be restrained by the
* 1964 order * and injunction of this honorable Court, from proceeding

in the said action of —, and from commencing or prosecuting any other proceedings at Law against the plaintiff for recovering possession of the said premises. [And for further relief, &c.] May it please, &c.

40. *Prayer of a bill to set aside a lease which had been granted upon the surrender of a form of lease, and for an account of earth and gravel dug up beyond the quantity allowed under the old lease; plaintiff offering to grant a lease, to continue for such term as was granted by the old lease, and to confirm any underleases granted by the defendant; praying also to HAVE AN AGREEMENT AND BOND DELIVERED UP, and for costs against the defendants; — praying also IN THE ALTERNATIVE, THAT IF THE NEW LEASE OUGHT NOT TO BE SET ASIDE, THEN THE SAME MAY BE RECTIFIED, and for an injunction to restrain the defendants from digging gravel or committing waste, or granting underleases.*

And that the said lease so executed by the said L. M. as aforesaid, may be set aside as having been obtained by fraud and imposition, and that the said C. G. may be decreed to deliver up the same to be cancelled, and that he may be decreed to account with the plaintiffs for all the earth and gravel dug up and taken by him from the said premises, beyond the quantity which he was entitled to dig under the old lease, and for the profits made by him by such earth and gravel, plaintiff hereby offering to deliver up the counterpart of the said lease to the said C. G., and also offering to grant a new lease to the said C. G., for such term as would be still subsisting in the old lease, if the same had not been surrendered, upon the same terms as were contained in such old lease with respect to such part of the said term, and to allow to the said C. G., in account, the surplus rent which has been paid by him under the new lease, beyond the rent which was reserved by the old lease, and also, so far as the Court shall think fit to direct, to confirm all the leases, underleases, and assignments made by the said C. G. at any time before plaintiff's bill of complaint in this cause was filed, and to make all reasonable allowances to the said C. G. for moneys laid out upon the said premises, and generally to submit to such terms as the Court shall be pleased to impose. And that the said A. L. may be decreed to deliver up the said agreement, of the — day of —, to the plaintiff, and to deliver up the said bond executed by the said C. G. to him; and that the said A. L., as well as the said C. G., may be decreed to be answerable for and to pay all the costs of this suit, and of setting aside the present lease and granting the new one, or, if this Court shall be of opinion that the said lease ought not to be set aside, then that the same may be *reformed and * rectified* by omitting the cov- * 1965 enant contained in the said lease with respect to the apportionment of rent, and by introducing a covenant for reserving to the owner of the reversion of the property comprised in the said lease, the right of having all underleases and assignments of the said property prepared by his own solicitors. And that the said C. G. may be restrained

by injunction of this Court from digging clay and making bricks upon the said land, and from digging and removing gravel from the same; and from committing any other waste or spoil in or about the said demised premises, and from granting, or making and contracting to grant and make, any leases, underleases, or assignments of any part of the said demised premises. [And for further relief.]

41. Statements in a bill to cancel a deed obtained by fraud, the property having afterwards been mortgaged to third persons without notice.¹

Bill alleges that plaintiff was aged and infirm, unable to read and write, and unaccustomed to the transaction of business; that the defendant, his brother-in-law, obtained from him authority to collect his rents and take charge of his property; and some time afterwards, with intention to defraud the plaintiff, plied him with intoxicating liquors, and brought him, while thus intoxicated, a document to sign, fraudulently representing it to be a power to collect rents and to manage his property; that this document was not read to the plaintiff, nor was he informed of its true contents, and that he signed it with his mark, relying entirely upon said representation; that he is now informed that it was a deed of conveyance of his whole estate to the defendant, for the nominal consideration of one hundred dollars; that the consideration was entirely nominal, that nothing was ever paid or agreed to be paid by the defendant for the land, and that the defendant never agreed to buy, and the plaintiff never agreed to sell or convey the land to him, or had any conversation or thought about such sale; that the defendant now assumed to own the entire estate conveyed in said deed, and had incumbered it with two mortgages (described in the bill), entirely without the consent, knowledge, or acquiescence of the plaintiff, and was about to convey away the whole estate, as the plaintiff feared and had reason to believe.

The bill prayed that the defendant might be restrained from further mortgaging, incumbering, or conveying the land, or exercising any act of ownership over it; that the deed to the defendant might be given up and cancelled; and for further relief.

SUPREME JUDICIAL COURT.

In Equity.

JOHN LEE	Plaintiff.
JAMES STYLES } and HENRY JONES }	Defendants.

¹ Dodd v. Cook, 11 Gray, 495. The Court held in this case that the defendant would be liable both for the land and for the amount of the two mortgages with which he had incumbered the estate. For form of bill to declare

void a levy, see Troup v. Wood, 4 John. Ch. 228; Briggs v. French, 2 Sumner, 261.

¹ See Commercial Mut. Ins. Co. v. McLoon, 14 Allen, 351.

Bill of Complaint.

To the Honorable Justices of the Supreme Judicial Court, &c.

Humbly complaining, sheweth unto your honors John Lee, of, &c., in the county of —, Esq., the above-named plaintiff, as follows:—

1. That on the — day of —, 1865, the plaintiff was the owner of a farm situate in the town of —, county of —. [Describe the farm.]

2. That the plaintiff being then old, infirm, and blind, and by reason thereof incapacitated from attending properly to business, the defendants on that day fraudulently taking advantage of the plaintiff's said incapacity, procured him to sign a certain writing, without paying him any consideration therefor, and which writing they falsely and fraudulently represented to be a mere matter of form.

3. That the plaintiff has since, and on the — day of —, 1865, applied to the defendants for said writing, or for information as to the contents thereof; but the defendants refused to allow him to see said writing or to give him any information concerning the same. That, as the plaintiff is informed and believes, the said writing is under seal and is a deed of said premises, and conveys the same, or some interest therein, to the defendants, and that they intend to use the same for their own benefit, and to the prejudice of the plaintiff.

Whereupon the plaintiff prays that this Court will declare the same to be void, and decree that defendants produce said writing and deliver it up to be cancelled, and for his costs of this suit. [Further relief.]

[Prayer for subpoena.]

43. Allegations in a bill to reform a policy of insurance in conformity with a previously concluded agreement for insurance.²

And thereupon your orator complains and says, that on the — day of, &c., he was the sole owner of a ship or vessel of the value of \$—, called the —, then lying at Q., in the province of —, and * bound on a voyage from said Q. to a port of discharge in * 1967 said U. K., on board which said ship there had been and was then laden a cargo of merchandise, the property of various persons other than your orator, and which said merchandise your orator had agreed should be conveyed in said ship, from said Q. to said port of discharge, for a certain amount of hire or freight to be paid him by said parties respectively therefor, amounting in the whole to the sum of \$—. And your orator being desirous to procure said vessel and said freight to be insured for said voyage, at and from said Q. to said port of discharge, namely, the said ship for the sum of \$—, valued at \$—, and said freight for the sum of \$—, valued at \$—, against the perils of the

² Oliver v. The Mut. Comm. Mar. Ins. Co. formed after suit and judgment against plaintiff, 227; see Mackenzie v. Coulson, Law Steinbach v. Relief Fire Ins. Co. 77 N. Y. Rep. 3 Eq. 268. But a policy will not be re- 498.

seas and other risks usually contained in marine policies of insurance, on property of such description, did, in writing by letter, bearing date, &c., request his agent, one J. E. O., of said Q., to procure the same to be insured on account of your orator, and to have the policies of insurance thereon in the name of your orator, a copy of which letter, marked (A), your orator hereto annexes and prays that the same may be taken as a part of this his bill of complaint.

And your orator further sheweth, that said J. E. O., afterwards on the — day of the same —, in compliance with the request of your orator, did, through one H. M., of —, broker, request one A. McL., of the city of —, and State of —, insurance broker, to procure said insurance upon said ship and said freight, to be made and effected at some proper and solvent insurance company in said —, or in —, in said State of —, and did cause to be transmitted to said A. McL., insurance broker as aforesaid, a copy of your orator's said letter, bearing date the said —; and thereupon the said A. McL. being unable to procure said insurance to be made and effected for a reasonable premium in said —, did, in writing, authorize and request one D. R. M., of said —, commission merchant, to cause said insurance to be made and effected by some proper insurance company in said —, which said written request and authority so given by said A. McL. to said D. R. M., was and is contained in two certain letters written by the said A. McL., to said D. R. M., one of which letters bears date, &c., and the other of said letters bears date, &c.; and your orator hereto annexes copies of both said letters marked (B. and C.) and prays that the same may be taken as parts of this his bill of complaint.

And your orator further shows, that in said letter of said A. McL., bearing date the, &c., by accident and mistake, the said D. R. M. was directed to cause said ship to be insured for the sum of \$—, to be valued at the sum of \$—, and said freight to be insured at the sum of \$—, and to be valued at the sum of \$—; and in and by said letter of said A. McL., bearing date the said —, said mistake was in part corrected, and said D. R. M. was directed to insure said ship for

the sum of \$—, and to insure said freight for the sum of \$—;
* 1968 but * by accident and mistake, the sum for which said ship and said freight were to be valued thereon was wholly omitted.

And your orator further shows, that the said D. R. M., after receiving said letters on the —, did apply to the said Commercial Mutual Marine Insurance Company to make insurance upon said ship and freight for your orators, according to the order and request of the said A. McL., and did then and there exhibit both said letters of said A. McL. to said Insurance Company, with the intent to inform said Insurance Company as well of the relation of said A. McL. as agent of the owners of the said ship, as to enable them to determine the character of the risk to be insured, and said Insurance Company did afterwards read and examine said letters, and on the same day did agree with the said D. R. M., acting as the agent of your orator, to insure the said ship on the voyage aforesaid, at and from said Q., for the sum of \$ —, to be valued at the sum of \$ —, and to insure the said freight of said ship on said voyage

for the sum of \$ —, to be valued at the sum of \$ —, and to receive as premium therefor the sum of \$ —.

And your orator further shows, that, thereafterwards, on the, &c., —, the said Insurance Company, with the intent and design to carry into effect said agreement, did cause to be made a writing or policy of insurance, signed by the president and secretary, bearing date, &c., a copy of which is hereto annexed, marked (D), which your orator prays may be taken as part of this his bill of complaint, and did deliver said policy to said D. R. M., the agent of your orator, as aforesaid, and did receive from said D. R. M., the agent of your orator, said premium of \$ —, which sum was thereafterwards by your orator repaid to said D. R. M.

And your orator further shows that, although, when said Insurance Company had so agreed to insure said ship and freight for the amounts aforesaid, it was well known to said Insurance Company that said A. McL. was merely the agent of the owner of said ship and of the person entitled to, and solely interested in, said freight; and that he, said A. McL., had no insurable or other interest whatever in either said ship or said freight, and that said A. McL. was, by profession and pursuit, a mere insurance broker, and that he was acting as the agent of the person who owned said ship and who was solely interested in said freight, and yet by accident and mistake said insurance on said ship and said freight was, by the terms of said policy, &c., declared to be on account of said A. McL., and without adding thereto the word "agent," or any other term indicating that he, the said A. McL. was insured as said agent of the party owning said ship and interested in said freight, and without the usual clause commonly inserted in such policies, that said insurance was effected for whom it might concern.

And your orator further shows, that said Insurance Company knew, * and was distinctly informed by said D. R. M., by said * 1969 letter of said A. McL. to said D. R. M., bearing date, &c., and submitted to and read by them as aforesaid, that said A. McL. was the mere agent of and broker for the owner of said ship, and had no interest whatever in said ship or freight, except so far as he would be entitled to the usual commission of a broker for procuring said insurance; and that said Insurance Company did agree, consent, and understand at the time said agreement to insure said ship and freight was made with said D. R. M., and before said policy so made to carry said agreement into effect was written and signed, that said insurance was to be made for the benefit and on account of the owner of said ship; and that said A. McL. was not the owner of said ship; nor interested therein or in said freight, and that by mere inadvertence, accident, and mistake in writing said policy of insurance, it was omitted to be inserted in said policy, that said insurance was made on account of said A. McL. as agent and for whom it might concern.

And your orator further shows unto your honors, that said policy was received by the said D. R. M., and transmitted to the said J. E. O., the agent of your orator, and by him kept and retained in ignorance, that by the terms and legal effect thereof no other interest was insured

thereby save that of the said A. McL., and in the full understanding as well by said A. McL., said D. R. M., and said J. E. O., that the interest of your orator in said ship and freight, to the extent of the sums named in said policy, was thereby insured and protected, in accordance with your orator's directions contained in his said letter to said J. E. O., bearing date the said, &c.

And your orator further shows, &c. [*Here state the loss of, &c.*]

And your orator submits to your honors, that, by reason of the premises, he is justly and equitably entitled to have said mistake so made in drawing said policy of insurance corrected, and said policy reformed by inserting therein that said insurance was made on account of A. McL. as agent, or for whom it may concern; and that the sums so insured by said company on said ship and said freight be paid to him accordingly.

And your orator further shows unto your honors, that previously to this suit being commenced, on the — day of —, and since, he applied to, and requested, and caused applications to be made to said Insurance Company, to act towards your orator in such a way as is equitable and just, and to reform said policy as aforesaid, and to adjust and pay to him the sums so insured by them on said ship and said freight, and so lost to your orator as aforesaid by reason of the perils insured against in said policy, and exhibited to said Insurance Company the usual and proper proofs of said agency of said A. McL. and of said loss, and of his sole ownership of said ship and sole interest in said

freight at the time of said agreement so made with the agent
 * 1970 of *your orator by said Insurance Company to insure the same
 as aforesaid, and your orator well hoped that said Insurance Company would have yielded to his said applications and paid to him the sums so insured by them and lost by him as aforesaid.

**44. Charges and prayer in bill to rectify settlement and remove trustees.
 [Modern English Form.]**

The truth of the matters aforesaid would appear, if the defendants R. W. and T. W. would set forth, as they ought to do, when and where and how and from whom and in whose presence the said T. W. received the instructions for the said settlement and the said new bonds executed as aforesaid, and whether or not in writing, and what has become thereof and of the draft and copies of the said settlement and bonds, and of all letters and notes which passed about the same or the preparation thereof, and whether the said T. W. made any and what entries in any and what book or books or bill of costs about taking such instructions, or the attendances for the same, and what is become thereof.

That the said settlement ought to be rectified and altered according to the intention of the parties thereto, and that the said former securities for the said loan to the said — ought to be restored to the plaintiff, and ought to be taken as still subsisting, &c.

That the defendants — and — ought to be removed from being trustees, and new ones appointed by the said M. A. D.

Prayer.

1. That it may be declared, that the aforesaid exchange or substitution of the said new securities for the said several sums of £ —— and £ —— bank annuities, and the dividends thereof, was a fraud upon the plaintiffs.

2. That it may be declared, that the said defendants —— and —— respectively are liable for the said several sums, to the same extent and in the same manner as if such exchange or substitution of securities had not taken place, and that they may be decreed forthwith to pay or make good such sums respectively, or such of them and such parts thereof as they were respectively liable for before such exchange or substitution of securities took place, and that the said defendants —— and —— may be decreed forthwith to pay or replace the said sum of £ ——

3. That, if necessary or proper, the said new securities may be delivered up to be cancelled.

4. That the said —— and —— may be removed from being trustees of the said settlement, and that the plaintiff M. A. D. may be at liberty to appoint new trustees thereof.

* 5. That it may be declared, that the said settlement is im- * 1971 properly framed in the particulars hereinbefore mentioned, and that the same may be corrected accordingly; and that the said trust moneys, when so paid or replaced, may be duly invested upon the trusts of the said settlement, when so corrected as aforesaid.

6. That the said J. W. may be declared to be responsible for what, if anything, may be lost by the aforesaid exchange or substitution of securities.

45. Bill to have a conveyance reformed.¹

(New Hampshire.)

To THE SUPREME JUDICIAL COURT.

ROCKINGHAM, ss.

T. K., of, &c., complains against T. G., of, &c., and N. G., his wife, and says that on the —— day of ——, 1856, the said defendants, T. G. and N. G., were negotiating with one M. for the purchase of a certain

¹ See Winnipesaukee Lake Cotton & Woolen Manuf. Co. v. Perley, 46 N. H. 83; Kennard v. George, 44 N. H. 448; post, p. 1973, note.

It is the general rule that a mistake in an instrument can be reformed in Equity only when the litigation is between the original parties to it. But where one purchases with knowledge of the mistake and the true intent and design of the instrument, he stands in no better position than the original parties. Adams v. Stevens, 49 Maine, 362; Freeman's Bank v. Vose, 23 Maine, 98; Ruhling v. Hackett, 1

Ner. 380. To reform a deed in Equity is to make a decree, that it shall be read and construed as it was originally intended by the parties, when an error in fact has been committed. Adams v. Stevens, *supra*; Lambert v. HiH, 41 Maine, 475.

In a suit to reform a deed, the holder of an equity of redemption, not barred by the lapse of time, under a mortgage not foreclosed, is a party in interest, and must be notified; so also of the grantor in the deed sought to be reformed. Pierce v. Faunce, 47 Maine, 507.

farm in H., bounded, &c.; that M. agreed to sell said farm for \$1,200, and it was agreed that the plaintiff should furnish \$1,000 of the purchase-money; that M. should convey the farm to the said N. G.; that she should give the plaintiff a note for said sum of \$1,000, and a mortgage of said land, to secure the note, and that the said M., T. G., and his wife, and K., the plaintiff, all met and transacted the business in that way, and that said acts were all parts of one and the same transaction: that said K., the plaintiff, is now the owner of said note and mortgage, that said note and interest thereon is now wholly due to said K., the plaintiff, and unpaid; that at the time of said transactions said N. G. was a married woman, and the wife of said T. G.; that the plaintiff was ignorant at the time, and not aware but the security thus taken was good and valid, and that he inquired of the magistrate who made the writings, and was informed that the security thus taken would be good, and that he supposed that, having paid a part of the purchase-money for the farm, he could have an interest in or security upon the same until his debt was paid;

that said N. G. has been requested to pay the money or to surrender * 1972 possession of the land, but declines to do either, upon the * ground that the note and mortgage are void, because she was, at the time of their execution, a married woman; that said N. G. knew, at the time of said conveyances, that said note and mortgage were void, and that she gave them in that way for the purpose and with the intent to defraud the plaintiff; and that said T. G., well knowing all the premises, was present and assisted his said wife in consummating said fraud on the plaintiff.

Wherefore the plaintiff prays that it may be ordered and decreed that unless the defendants, or one of them, pay said sum of \$1000 and interest thereon, to the plaintiff within a reasonable time, they and each of them be foreclosed from the right to redeem said premises, or that the interest of said plaintiff in said land may be set out to him, or that his deed may be reformed, so as to give effect to the intention of the parties, and for such other relief as may be just.

T. K.

J. B., *Solicitor.*

Decree on the above.¹

It is, therefore, ordered and decreed that said T. G. and N. G. execute and deliver to the plaintiff, within twenty days, a joint quit-claim mortgage deed of the premises described in the plaintiff's bill, to secure nine hundred and ten dollars as of the — day of —, upon the presentation to them of such a deed by the plaintiff, and that unless the said sum of nine hundred and ten dollars, with legal interest thereon from said — day of —, be paid to the plaintiff within sixty days, a writ of possession in common form, as upon mortgage, shall issue in favor of the plaintiff.

¹ See Kennard v. George, 44 N. H. 440, 444; Winnipiseogee Lake Cotton and Woollen Manuf. Co. v. Perley, 46 N. H. 83, 109.

46. Bill to reform a conveyance by correcting a mistake in a boundary.

(Title and Address.)

Humbly complaining, sheweth unto your honors, the plaintiff.

1. That on the — day of —, 186—, the defendant executed and delivered to the plaintiff, under his hand and seal, a deed, of which the following is a copy [give a copy, containing, for example, the following description of the premises conveyed. All that certain lot, &c., beginning at a point, &c., running thereon easterly along A. Street — feet, thence southerly along B. Street — feet, thence westerly and parallel to C. Street — feet, thence southerly and parallel to D. Street — feet, to the place of beginning.]

2. That the description therein given of the premises intended to be conveyed was erroneous, and in fact does not describe any premises *whatever; that the word "southerly," as last used in said *1973 description, was inserted by mistake of the parties¹ to said deed [or otherwise, or if fraud is relied upon, the circumstances of it should be specifically stated], instead of the word "northerly," which should have been used instead thereof; and that in order to make said deed pass any premises whatever to the plaintiff, and to make it conform to the actual intention of the parties,² it is necessary that the said description should be rectified and reformed by substituting the word "northerly" for the word "southerly," where the latter word is last used therein [or say, so as to read as follows, and insert description in full as corrected].

3. That the plaintiff has paid to the defendant for the said premises the consideration expressed in said deed.

[Prayer that the deed may be reformed, &c.]

¹ The mistake must be made out according to the understanding of both parties. Sawyer v. Hovey, 3 Allen, 331; Andrews v. Essex Ins. Co. 3 Mason, 10; Green v. Morris, 12 N.J. Eq. 170; Canedy v. Marcy, 13 Gray, 373; Nevius v. Dunlap, 33 N.Y. 676; Shay v. Peties, 35 Ill. 360; Harris v. Pepperell, L. R.

5 Eq. 1; Earl of Bedford v. Earl of Ronney, 30 Beav. 431; Garrard v. Frankel, 30 Beav. 445; Durant v. Bacot, 13 N.J. Eq. 201. But see the sensible limitations upon this doctrine in Brown v. Lamphear, 35 Vt. 252; see Andrew v. Spurr, 8 Allen, 412.

² Ibid.

SECTION XIII.

Bill to restrain the Infringement of Copyrights.

47. *A bill to restrain a publication of a "Life of Washington," containing —— pages, of which —— pages were copied from Sparks's "Life and Writings of Washington," —— pages being official letters and documents, and —— pages being private letters of Washington, originally published by Mr. S.**

To the Judges of the Circuit Court of the United States, for the District of Massachusetts.

The bill of complaint of C. F., T. G. W., L. T., and J. S., all of C., in the county of M., in said district, against B. M., N. C., G. P. L., and T. H. W., and C. W. U.

Respectfully show your orators C. F., T. G. W., and L. T., printers, and publishers and copartners, doing business under the name and style of F., W., & T., and J. S., gentleman, all of C., in the county of M., in said district of Massachusetts, and all being citizens of the United States, that the said J. S., is, and heretofore at the time of the infringement hereinafterwards mentioned was, proprietor of the copy-

right of a work of which the said J. S. is the author and com-
* 1974 piler, entitled, "The * Writings of George Washington, being

his Correspondence, Addresses, Messages, and other Papers, official and private, selected and published from the original Manuscripts, with a Life of the Author, Notes and Illustrations, by J. S.," consisting of twelve volumes, of all which volumes respectively the copyright was taken out by said J. S., previous to the publication thereof respectively, and secured according to law, the said J. S., at the time of taking out and securing said copyrights respectively, and still being a citizen of the United States, and the term of each and all of which copyrights has still more than eight years to run; and that said F., W., and T., before the infringement hereinafterwards complained of, had, by an agreement with said J. S., undertaken and become interested in and assumed a part of the risk and responsibility of the publication of said work, and have ever since continued, and still continue, to be thus interested, and that ever since the first publication of the several volumes of said work, the public have been supplied with copies of the same by said J. S. and the publishers of the same at reasonable prices; and that said J. S. and said F., W., & T., have incurred very large expenses upon said publication, and have been and are in the receipt of large amounts, the proceeds of the sale of said work, to reimburse their expenses, and remunerate their labor and care bestowed on the same. And your orators further show that they, your orators, being in the receipt of large sums, the proceeds of the sale of said work as aforesaid, under said copyrights, B. M., N. C., and T. H. W..

* See Folsom v. Marsh, 2 Story, 100.

all of B., in the county of S., in said district of Massachusetts, and G. P. L., of C., in the county of M., in the district of N. H., booksellers, being copartners under the name, style, and firm of M., C., L., & W., and also C. W. U., of S., in the county of E., in said district of Massachusetts, clerk, all of them well knowing that said J. S. held such copyrights and said F., W., & T. were interested in the said publication, and deliberately, after due notice, intending to infringe said copyrights at said B., on the fifth day of August, in the year of our Lord eighteen hundred and forty, and at divers times before and since the said fifth day of August, without the allowance and consent of your orators, or either of them, published and exposed to sale and sold a work in two volumes entitled "The Life of Washington," in the form of an autobiography, the narrative being, to a great extent, conducted by himself in extracts and selections from his own writings, with portraits and other engravings, consisting of —— pages in the whole, which they still continue to expose to sale, having had due notice, and well knowing that the same is a copy from, and an infringement and piracy of, said "Writings of George Washington, &c., with a Life of the Author," so published by your orators as aforesaid. And your orators aver that three hundred and eighty-eight pages of said piratical work are copied *verbatim et literatim* from the said work so edited and compiled by said J. S., as aforesaid, and * so published by your orators as afore- * 1975 said, consisting of matter which was published originally by said J. S. under his said copyright, and which had never before been published or printed, and which he, the said J. S., and his assigns, had the exclusive right and privilege to print, publish, and sell and expose to sale; and that many other parts of said piratical work published by said parties complained of, besides said three hundred and eighty-eight pages, are infringements upon said J. S.'s said copyrights, whereby your orators have sustained great damage, detriment, and injury. And your orators further show, that said M., C., L., & W., and U., still continue and threaten hereafter to continue to print, publish, and expose to sale and sell copies of the said piratical work, the protests, expostulations, and warnings of your orators to them, to the contrary notwithstanding. All which actings, doings, and pretences are contrary to equity and good conscience, and tend to the wrong and injury of your orators in the premises. In consideration whereof and forasmuch as your orators are remediless in the premises at Law, and cannot have adequate relief, save in a Court of Equity, where matters of this and the like nature are properly cognizable and relievable, and to the end that said M., C., L., & W., and U. may appear and answer all and singular the matters and things hereinbefore set forth and complained of, particularly how many copies of said piratical work they have sold, what number they have on hand, and that they be restrained by injunction issuing from this Court from selling or exposing to sale, or causing or being in any way concerned in the selling or exposing to sale, or otherwise disposing of any copies of said piratical work, and that they be ordered and decreed to render an account of the copies of the same that they have sold, and to pay over the profits of such sales to the plaintiffs, and that they be ordered to surrender and

deliver up the copies on hand and the stereotype plates of said piratical work to an officer of this Court to be cancelled and destroyed, and be ordered to pay the plaintiffs their costs; and that your orators may have such other and further relief as to this honorable Court may seem meet, or as Equity may require, — may it please this honorable Court to grant to your orators a writ of *subpæna* directed to the said M., C., L., & W., and U., commanding them at a day certain, and under a certain penalty to be therein inserted, personally to be and appear before this honorable Court, then and there to answer the premises, and to stand and abide such order and decree therein as to this honorable Court shall seem agreeable to equity and good conscience.

P. & R.

By their Solicitors.

Bill to restrain the Infringements of Patent Rights.

48. Bill for injunction to restrain the infringement of a patent right, setting out recoveries at Law and in Equity.

To the Judges of the Circuit Court of the United States for the District of Massachusetts.

In Equity.

E. H., Jr., of B. in the State of New York, and a citizen of the State of New York, brings this his bill against C. W., of B., in the State of Massachusetts, and a citizen of the State of Massachusetts :—

And thereupon your orator complains and says, that he, being the original and first inventor of a new and useful improvement in sewing-machines, fully described in the letters patent issued to him therefor, as hereinafter stated, and not known or used by others before his invention thereof, and not at the time of his application for letters patent therefor, in public use or on sale with his consent or allowance as the inventor; and being a citizen of the United States, and having made due application, and having fully and in all respects complied with all the requisitions of the law in that behalf, did obtain letters patent therefor, issued in due form of law to him in the name of the United States, and under the seal of the Patent Office of the United States, and signed by N. P. T., Acting Secretary of State, and countersigned by H. H. S., Acting Commissioner of Patents, bearing date the tenth day of September, in the year of our Lord eighteen hundred and forty-six, whereby was granted and secured, according to law, to your orator, his heirs, administrators, or assigns, for the term of fourteen years from said date, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement in sewing-machines therein specified and claimed, as in and by said letters patent, or a certified copy thereof, here in Court to be produced, will more fully appear.

And your orator further shows unto your honors, that certain assignments of certain rights in said patent have been made and duly recorded

in the Patent Office of the United States, whereby your orator, prior to the infringements herein complained of, became and now is the sole owner of said patent; as in and by said assignments, or certified copies thereof here in Court to be produced, will more fully appear.

And your orator further shows unto your honors, that the said improvement in sewing-machines, patented to him as aforesaid, has * hitherto been in the exclusive possession of your orator or his *1977 grantees; and has hitherto been and still is of great value and profit to your orator; and that a license fee or patent rent, under his said patent, has hitherto been and still is paid to your orator for the largest portion of all the sewing-machines manufactured and sold in the United States; yet the said defendant, well knowing the premises, but contriving how to injure your orator, and without his consent or allowance, and without right, and in violation of said letters patent, and your orator's exclusive rights, secured to him aforesaid, has made, used, or vended, and still does make, use, or vend to others to be used in said district and in other parts of the United States, a large number of sewing-machines, but how many your orator cannot state, but prays that the defendant may discover and set forth each, embracing substantially the improvement in sewing-machines, or a material part thereof, patented to your orator as aforesaid, and thereby the said defendant has infringed, and still does infringe, and cause your orator to fear that in future he will infringe upon the exclusive rights and privileges intended to be secured to your orator in and by his said letters patent.

And your orator further shows unto your honors, that heretofore the validity of his said patent has been uniformly affirmed after severe and repeated contestation; namely, by a verdict and judgment thereon at Law, in 1852, and by six final decrees in Equity in the Circuit Court of the United States for the District of Massachusetts, and by one final decree in Equity in the Circuit Court of the United States for the Southern District of New York, all obtained in favor of said patent prior to August, 1854.

And your orator further shows unto your honors, that the sewing-machines made and sold by the defendant, as herein complained of, are, in their essential parts and character, substantially like the sewing-machines against which injunctions were obtained in the suits aforesaid, by your orator, or by your orator and his then co-owner of said patent.

And your orator has requested the said defendant to desist from making, using, or vending to others to be used, the said sewing-machines, embracing the said improvement patented to your orator, and to account with and pay over to your orator the profits made by said defendant by reason of the unlawful making, using, or vending of said sewing-machines embracing said patented improvement of your orator. But now, so it is, may it please your honors, that said defendant has combined and confederated with other persons, to your orator unknown, but whom, when discovered, your orator prays leave to make defendants hereto, to resist, and destroy the exclusive rights and privileges secured to your orator as aforesaid, and to make, use, and vend said improvement in sewing-machines, patented to your orator as aforesaid, * without * 1978

deliver up the copies on hand and the stereotype plates of said piratical work to an officer of this Court to be cancelled and destroyed, and be ordered to pay the plaintiffs their costs; and that your orators may have such other and further relief as to this honorable Court may seem meet, or as Equity may require, — may it please this honorable Court to grant to your orators a writ of *subpœna* directed to the said M., C., L., & W., and U., commanding them at a day certain, and under a certain penalty to be therein inserted, personally to be and appear before this honorable Court, then and there to answer the premises, and to stand and abide such order and decree therein as to this honorable Court shall seem agreeable to equity and good conscience.

P. & R.

By their Solicitors.

Bill to restrain the Infringements of Patent Rights.

48. Bill for injunction to restrain the infringement of a patent right, setting out recoveries at Law and in Equity.

To the Judges of the Circuit Court of the United States for the District of Massachusetts.

In Equity.

E. H., Jr., of B. in the State of New York, and a citizen of the State of New York, brings this his bill against C. W., of B., in the State of Massachusetts, and a citizen of the State of Massachusetts: —

And thereupon your orator complains and says, that he, being the original and first inventor of a new and useful improvement in sewing-machines, fully described in the letters patent issued to him therefor, as hereinafter stated, and not known or used by others before his invention thereof, and not at the time of his application for letters patent therefor, in public use or on sale with his consent or allowance as the inventor; and being a citizen of the United States, and having made due application, and having fully and in all respects complied with all the requisitions of the law in that behalf, did obtain letters patent therefor, issued in due form of law to him in the name of the United States, and under the seal of the Patent Office of the United States, and signed by N. P. T., Acting Secretary of State, and countersigned by H. H. S., Acting Commissioner of Patents, bearing date the tenth day of September, in the year of our Lord eighteen hundred and forty-six, whereby was granted and secured, according to law, to your orator, his heirs, administrators, or assigns, for the term of fourteen years from said date, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement in sewing-machines therein specified and claimed, as in and by said letters patent, or a certified copy thereof, here in Court to be produced, will more fully appear.

And your orator further shows unto your honors, that certain assignments of certain rights in said patent have been made and duly recorded

in the Patent Office of the United States, whereby your orator, prior to the infringements herein complained of, became and now is the sole owner of said patent; as in and by said assignments, or certified copies thereof here in Court to be produced, will more fully appear.

And your orator further shows unto your honors, that the said improvement in sewing-machines, patented to him as aforesaid, has * hitherto been in the exclusive possession of your orator or his grantees; and has hitherto been and still is of great value and profit to your orator; and that a license fee or patent rent, under his said patent, has hitherto been and still is paid to your orator for the largest portion of all the sewing-machines manufactured and sold in the United States; yet the said defendant, well knowing the premises, but contriving how to injure your orator, and without his consent or allowance, and without right, and in violation of said letters patent, and your orator's exclusive rights, secured to him aforesaid, has made, used, or vended, and still does make, use, or vend to others to be used in said district and in other parts of the United States, a large number of sewing-machines, but how many your orator cannot state, but prays that the defendant may discover and set forth each, embracing substantially the improvement in sewing-machines, or a material part thereof, patented to your orator as aforesaid, and thereby the said defendant has infringed, and still does infringe, and cause your orator to fear that in future he will infringe upon the exclusive rights and privileges intended to be secured to your orator in and by his said letters patent.

And your orator further shows unto your honors, that heretofore the validity of his said patent has been uniformly affirmed after severe and repeated contestation; namely, by a verdict and judgment thereon at Law, in 1852, and by six final decrees in Equity in the Circuit Court of the United States for the District of Massachusetts, and by one final decree in Equity in the Circuit Court of the United States for the Southern District of New York, all obtained in favor of said patent prior to August, 1854.

And your orator further shows unto your honors, that the sewing-machines made and sold by the defendant, as herein complained of, are, in their essential parts and character, substantially like the sewing-machines against which injunctions were obtained in the suits aforesaid, by your orator, or by your orator and his then co-owner of said patent.

And your orator has requested the said defendant to desist from making, using, or vending to others to be used, the said sewing-machines, embracing the said improvement patented to your orator, and to account with and pay over to your orator the profits made by said defendant by reason of the unlawful making, using, or vending of said sewing-machines embracing said patented improvement of your orator. But now, so it is, may it please your honors, that said defendant has combined and confederated with other persons, to your orator unknown, but whom, when discovered, your orator prays leave to make defendants hereto, to resist, and destroy the exclusive rights and privileges secured to your orator as aforesaid, and to make, use, and vend said improvement in sewing-machines, patented to your orator as aforesaid, * without

* 1978

the license of your orator, and in violation of his just rights in the premises, all of which is contrary to equity and good conscience.

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief herein prayed, and may, under oath, and according to his best and utmost knowledge, remembrance, information, or belief, full, true, direct, and perfect answer make to all and singular the premises, and more especially may answer, discover, and set forth, whether during any and what period of time, and where, he has made, used, and vended to others to be used, for any and what consideration, any, and how many, sewing-machines, and whether or not the same embraced the said improvement in sewing-machines, or any substantial part thereof, patented to your orator as aforesaid, or how the same differed from your orator's said patent, if at all.

And that the said defendant may answer the premises, and may be decreed to account for and pay over to your orator all gains and profits realized from his unlawful making, using, or vending of sewing-machines, embracing said improvement patented to and vested in your orator as aforesaid, and may be restrained by an injunction to be issued out of this honorable Court, or by one of your honors, according to law in such case provided, from making, using, or vending any sewing-machines embracing said improvement, or any substantial part thereof, patented to your orator as aforesaid, and that the infringing machines, now in the possession or under the control of the defendant, may be delivered up to your orator, or be destroyed; and for such further and other relief in the premises as the nature of the case may require, and to your honors may seem meet.

May it please your honors to grant unto your orator, not only a writ or writs of injunction, conformable to the prayer of this bill, but also a writ or writs of *subpoena* to be directed to the said C. W., and confederates, when discovered, commanding him and them, at a certain time, and under a certain penalty, therein to be limited, personally to be and appear before your honors in this honorable Court, then and there to answer unto this bill of complaint, and to do and receive what to your honors shall seem meet in the premises.

E. H., JR.

49. Another form of bill to restrain infringements of patent rights — title having been established in previous suit — account, &c.

To the Judges of the Circuit Court of the United States for the District of Massachusetts.

C. G., of N. H., in the State of C., and the Union India Rubber Company, a corporation duly established by the laws of the * 1979 State of * N. Y., bring this, their bill of complaint, against the Beverly Rubber Company, a corporation duly established by the laws of Massachusetts.

And thereupon your orators complain and say, that before the fifteenth day of June, eighteen hundred and forty-four, the said C. G.

became, and was the first and original inventor of a certain "new and useful improvement in India-rubber fabrics," which your orators verily believe had not been known or used before his invention thereof, and which was not at the time of his application for a patent therefor in public use or on sale with his consent or allowance; and being such first and original inventor, and being desirous of obtaining an exclusive property in the invention by him made, the said C. G. made application in writing to the Commissioner of Patents, expressing such desire, and delivered a written description of his invention or discovery, and a specification of improvement by him claimed: whereupon such proceedings were had, that on the fifteenth day of June, eighteen hundred and forty-four, letters patent of the United States, entitled for "a new and useful improvement in India-rubber fabrics," signed by J. C. C., Secretary of State, and countersigned and sealed with the seal of the Patent Office, by H. L. E., Commissioner of Patents, were issued to your orator in due form of law, granting to your orator, C. G., his heirs, administrators, or assigns, for the term of fourteen years from the day of the date thereof, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof was annexed to the said letters patent.

And your orators further show, that afterwards the said C. G. surrendered the said last-mentioned letters patent to the Commissioner of Patents, in due form of law, and such proceedings were had that said Commissioner did, on the twenty-fifth day of December, eighteen hundred and forty-nine, reissue to said C. G. letters patent of the United States, entitled for a new and useful "improvement in processes for the manufacture of India-rubber," signed by T. E., Secretary of State, and countersigned and sealed with the seal of the Patent Office, by T. E., Commissioner of Patents, whereupon there was granted to your orator, said C. G., his heirs, administrators, and assigns, for the term of fourteen years, from the fifteenth day of June, eighteen hundred and forty-four (being the date of the said surrendered letters patent), the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof was annexed to said reissued letters patent, as by reference to the same, or to a true copy thereof hereunto annexed, and making a part of this, your orator's bill of complaint, will more fully and at large appear.

And your orators further show, that, soon after the granting of the said original letters patent, one H. H. D. commenced infringing the * same, and that various suits were brought against him by * 1980 your orator, C. G., at Law and in Equity.

A suit was also commenced by your orator, C. G., against E. S. and J. B. K., the agents of said H. H. D., for infringing said patent, in the Circuit Court of the United States, for the District of Massachusetts, in the year 1845; and said H. H. D. and his said agents, E. S. and J. B. K., by their pleas, answers, and notices, denied that your orator C. G. was the first and original inventor of the improvement described and

claimed in said patent of June 15, 1844, and also denied that said patent was of any validity, for the reasons in said pleas, notices, and answers set forth, upon which allegations the parties were at issue, that said suits were pending in said Court till the fall of 1846, and for the trial of which preparation had been made on both sides.

And your orators further show, that said suits were settled upon the application of said H. H. D., and a written agreement was executed between said H. H. D. and your orator C. G., whereby said H. H. D. agreed, among other things, to pay five thousand dollars for said settlement, and for a license to manufacture certain articles under said patent and other patents of your orator C. G., and to pay a tariff therefor, and covenanted not to infringe said patent; and said H. H. D. then and thereby acquiesced in your orator's (said C. G.'s) rights, and acknowledged the validity of said patents, and said sum of five thousand dollars was paid by said H. H. D., and said suits were discontinued, except the said suit against E. S. and J. B. K., agents of said H. H. D., in which a verdict was taken and judgment entered up against them in favor of your orator C. G., and satisfied as agreed between your orator (said C. G.) and said H. H. D., as by the record thereof now produced here in Court will fully appear; and your orators further show, that soon after said settlement and the discontinuance of said suit, said H. H. D. recommenced his infringement of said patent; whereupon, your orator C. G., about the first day of November, eighteen hundred and fifty, filed his bill against the said H. H. D. in the Circuit Court of the United States for the District of N. J., setting out the said letters patent and the infringement thereof, praying an injunction and account against the said H. H. D.; to which bill of complaint the said H. H. D. filed his answer, denying the validity of the said letters patent, and setting up that some other persons than your orator C. G. were the inventors of the things patented by him, and that the said reissue to your orator C. G. was fraudulent and void, and that your orator C. G. had no title by reason thereof in his said invention: and issue being joined thereon, the parties proceeded to proofs, which were taken at great length and for a long time.

And your orators further show, that, the proofs in said cause being taken, the cause was brought to final hearing on its merits at the

March term of the Circuit Court of the United States for the
* 1981 District * of N. J., in the year eighteen hundred and fifty-two,
before Justices G. and D., and by them held under advisement
until the September term then next following, when the judgment of the
Court was pronounced, and opinions delivered, copies whereof are hereunto annexed. And the said Court then decided that both the said
letters patent were valid in Law, and that your orator C. G. was the
inventor of the improvement patented, as aforesaid, by your orator
C. G., and referred to in said bill of complaint; that the said reissued
letters patent were lawfully reissued, and by a decree pronounced in
said cause, perpetually enjoined the said H. H. D. from making, con-
structing, using, or vending to others to be used, the said improvements,
and ordered an account to be taken of the damages due your orator

C. G. by reason of the infringements of said H. H. D. already committed; as by reference to a true copy of the judgment of the Court, or to the record of proceedings therein, ready to be produced, will more fully and at large appear.

And your orators further show, that, from the granting of the said letters patent, until the hearing of the said cause against H. H. D., said C. G. had and enjoyed an exclusive possession and use of the said improvements, by himself and his licensees, except so far as the same were disturbed by said H. H. D., and those combined and confederated with him, and by a few other persons who from time to time began to violate his rights, but who uniformly acquiesced in them, and submitted to pay tariffs for their future enjoyment, when they became acquainted with your orator's (said C. G.'s) rights secured by his patent, so far as your orators have been informed and believe.

And your orators further show, that the annexed schedule, marked A, is a correct copy of the original letters patent aforesaid; the annexed schedule, marked B, is a correct copy of the letters of reissue aforesaid; and the annexed schedule, marked C, contains true copies of the opinions delivered as aforesaid by the Judges of the Circuit Court of the United States, for the District of N. J.

And your orators further show, that, on the fifteenth day of June, A. D. 1858, the honorable J. H., Commissioner of Patents of the United States, did, as such Commissioner, duly grant to said C. G. an extension of said letters patent of June 15, 1844, as reissued December 25, 1849, for the further term of seven years from the said fifteenth day of June, A. D. 1858, and that the certificate and award of such extension were, by the said Commissioner, duly indorsed on the letters patent, of which extension was so granted.

And your orators further show, that, before the said extension, the said Union India Rubber Company held, under certain agreements, rights from said C. G. authorizing them to make various articles of India-rubber according to his process, so as aforesaid patented, and giving them the exclusive right to make clothing according to that *process. That, on the twenty-third day of April, A. D. * 1982 1858, and afterwards, on the third day of July, A. D. 1858, said C. G. for a valuable consideration, executed and delivered to the said Union India Rubber Company certain agreements continuing such rights. That all the agreements aforesaid are in full force, and true copies of them are hereunto annexed, those first mentioned being marked as Exhibit D, and the two last-mentioned agreements being marked as Exhibit E.

And your orators further show, that the said Union India Rubber Company, before said extension, were, and ever since have been, and now are, engaged under said agreement in the business of making and selling India-rubber goods of various kinds, including clothing, which are made under the aforesaid several agreements, according to said process of C. G., patented as aforesaid.

And your orators further show, that, amongst all persons engaged in the manufacture of India-rubber within the United States, the term or

phrase "Vulcanized Rubber Goods" is used and is understood by the defendants, and other persons in said business, to mean the fabric or product made according to said C. G.'s process, patented as aforesaid, and is so used and understood as the designation of all goods made of a compound of India-rubber in the original composition, whereof sulphur was present in any form or degree; such compound being in that state subjected to the action of artificial heat, so as to produce the chemical or other changes or effects described in said C. G.'s original and reissued letters patent, and the specifications thereto annexed. And your orators employ such phrase in this bill of complaint in the sense so explained.

And your orators further show, that, as they have been informed and believe, the said defendants, not only before the extension of C. G.'s aforesaid patent, but also since that time, have been, and they now are, engaged, without the license or consent of said C. G., or your orators, in making and selling, or causing or procuring to be made and sold, various kinds of goods of vulcanized rubber, which goods are included in the aforesaid rights of your orators. That the said defendants, in the making of such goods, have, as your orators are informed and believe, used a compound of India-rubber in which sulphur was present when the compound was subjected to the action of artificial heat, so as to produce the aforesaid changes or effects. But your orators are informed and believe that said defendants claim or pretend, as to the whole or some of such goods, that they do not subject the same to the particular degree of heat mentioned by C. G., in his aforesaid specifications, or that in some manner they avoid following exactly the process of manufacture so described by him. But your orators aver and charge that the said pretence is unfounded, and that the goods so made by said defendants, or the compounds of which they are made, have,

* 1983 before the completion of the manufacture, at some time, been subjected * to the treatment or process described by C. G. as aforesaid, or some treatment or process substantially or practically similar in its nature and the same in its effects.

And your orators further show, that, as they are informed and believe, the said defendants threaten to continue making and selling, or making or selling, or causing or procuring to be made and sold, or made or sold, such goods as are above described in this bill of complaint. And your orators say that they have been damaged and injured by such acts of the defendants, and apprehend being further injured in future by the repetition or continuance of such acts.

And your orators pray that said several papers heretofore referred to in this bill of complaint, and of which copies are annexed as aforesaid, may be taken as part of such bill, your orators being prepared to prove the execution of the several agreements aforesaid, and the issuing of said letters patent, and the giving of the opinion aforesaid in N. J., and being ready to produce all such documents and papers.

All which actings, doings, and pretences are contrary to equity and good conscience, and tend to the manifest injury of your orators in the premises.

In consideration whereof, and forasmuch as your orators can only have adequate relief in this Court, where matters of this kind are properly cognizable and relievable ; To the end, therefore, that the said, the Beverly Rubber Company, and their confederates, when discovered, may, upon their respective and corporal oaths, and to the best and utmost of their respective knowledge, information, and belief, full, true, and perfect answer make to all and singular the matters aforesaid and that as fully and particularly as if the same were now repeated, and they severally interrogated thereto, and more especially that they may set forth particularly :—

First. Whether the said suit was not brought against the said H. H. D. at the time and manner specified therein ; and whether it did not result as herein described.

Second. Whether said Beverly Rubber Company has not made and sold, or caused and procured to be made and sold, clothing or other goods ; and if so, what kind and amount of articles in the manufacture of which, at any time during the process of manufacture, or in the completion thereof, there was used or employed a compound of India-rubber in which sulphur was present, to which compound, or the goods when made thereof, artificial heat was or had been applied, so as to produce in such compound or goods the effect of vulcanization.

Third. Whether the said defendants have made and sold, or caused or procured to be made and sold, any, if so, what description and quantity of, goods of vulcanized rubber, or rubber compounded with sulphur, and subjected to the action of artificial heat, according to the process described in the aforesaid letters patent of C. G., or the specifications attached thereto.

* *Fourth.* Whether the said defendants have, since the said fifteenth day of June, A. D. 1858, made or sold, or caused or procured to be made or sold, any, and if so, what description and quantity of, goods made of and from a compound of India-rubber, which compound had, at any time, or in any form, been subjected to artificial heat, so as to have become vulcanized within the meaning of that term as hereinbefore defined and used, or so as to become insensible to the action of heat or cold, or prevented from liability to decompose from the action of essential oils or animal perspiration. And that the defendants may answer the premises, and that they may be decreed to account with your orators for the quantity of articles which they have made in violation of the said letters patent or any of the rights of your orators, and to pay over to your orators such sums as may be proper as damages for such infringements, and that the defendants may be perpetually enjoined from any further violation of the rights of your orators, or of either of them. Or that your orators may have such other or further relief in the premises as may be consistent with equity and good conscience.

May it please your honors, the premises considered to grant unto your orators the writ of injunction issuing out of, and under the seal of this honorable Court, directed to the said Beverly Rubber Company, commanding and strictly enjoining them, and each of them, not to manufacture,

use, or sell, or cause or procure to be manufactured or sold, any articles of vulcanized rubber, or any articles made of a compound of India-rubber, in which sulphur is present in any form or degree, such compound, or the fabric made therefrom, having been at any time subjected to the action of artificial heat so as to be changed or affected in the manner described in the aforesaid letters patent or specifications, or so as to have become insensible to heat or cold, or not liable to decompose from the action of essential oils or animal perspiration, and from taking or selling any article made from a compound which has been, at any time, so vulcanized, or affected or changed.

And also the writ of *subpæna* issuing out of and under the seal of this honorable Court, directed to the said defendants, commanding them to be and appear at a certain day, and under a certain penalty therein to be expressed, before this honorable Court, to answer the premises, and to stand to, perform, and abide by such order, direction, and decree, as to your honors shall seem meet.

And your orators, &c.

E. M.¹

* 1985 * 50. *English form of bill to restrain infringement of patents, and for account and damages.*

(*Title and address of bill.*)

Humbly complaining, &c., J. T., A. T., W. T., and H. T., all of, &c., the above-named plaintiffs, as follows:—

1. Before and at the time of the making of the letters patent next hereinafter mentioned, the plaintiffs had discovered, and were the sole, true, and first inventors of the improvements in machinery for the manufacture of looped or knitted fabrics in such letters patent mentioned; and no other person before or at such time made, used, exercised, or vended the said improvements or invention.

2. On the tenth of October, 1855, her present Majesty, by letters patent of that day, under the Great Seal of Great Britain, did for herself, her heirs, and successors, give and grant unto the plaintiffs her special license, that they, their executors, administrators, and assigns, or such others as the plaintiffs, their executors, administrators, and assigns, should at any time agree with, and no others, from time to time, and at all times thereafter, during the term of fourteen years from the date of the said letters patent, should and lawfully might make, use, exercise, and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man, an invention for "Improvements in machinery for the manufacture of looped or knitted fabrics:" upon the condition that the plaintiffs, their executors or administrators, by an instrument in writing under their hands and seals, or under the hands and seals of one of them, should particularly describe and ascertain the nature of the said invention, and in what manner the

¹ See *Thompson v. Scott*, 4 Dillon, 510.

same was to be performed, and cause the same to be filed in the Great Seal Patent Office, within six calendar months next and immediately after the date of the said letters patent; as by the said letters patent, when produced, will appear.

3. In pursuance of the said condition the plaintiffs, by an instrument in writing under their hands and seals, dated the seventh of April, 1856, and enrolled in the Great Seal Patent Office on the ninth of the same month of April, 1856, particularly described the nature of their said invention, and in what manner the same was to be performed; as by the said instrument in writing, when produced, will appear.

4. *Concise statement from the specification of the nature of the invention.*

5. The said letters patents have never been impeached; and the same have, from the day of the date thereof remained, and now are, in full force, and of valid and effectual authority; and the said improvement and invention was and is novel, useful, and valuable; and from the day of the date of the said letters patent the plaintiffs have applied the said *invention with great success; and have manufactured *1986 large quantities of looped fabrics by means of machinery constructed according to the said invention, and have derived great profit from the manufacture of such looped fabrics.

6. The plaintiffs have never permitted any machines to be constructed according to the said invention for any person, except for themselves; and they have never granted any license to use the said invention to any person whomsoever.

7. In the month of ——, the plaintiffs discovered, for the first time, as the fact is, that the defendant has caused to be constructed for himself, and erected at L., several machines constructed according to the plaintiffs' said invention, or upon the principle of, or only colorably differing from the plaintiffs' said invention, and that by means of such machines the defendant is manufacturing large quantities of looped fabrics.

8. The defendant has made, and is now making, such goods as last aforesaid, and is selling the same, to the great prejudice and damage of the plaintiffs; and he has derived, and is now deriving, large gains and profits therefrom.

9. The defendant has sold the looped fabrics so manufactured at a great reduction on the price at which they had been sold previously by the plaintiffs; and the plaintiffs have been thereby compelled to reduce their charges for manufacturing such looped fabrics, to the great loss and damage of the plaintiffs.

10. The plaintiffs have frequently applied to the defendant, and requested him to discontinue the use of their said invention, and the infringement of their said patent, and to come to an account with the plaintiffs for the profits made by the defendant by such use and infringement; but the defendant has refused to comply with such request.

Prayer.

The plaintiffs pray as follows:—

1. That an account may be taken of the profits made by the defendant from the sale of looped fabrics manufactured by him by means of machines constructed according to the plaintiffs' said invention, or constructed upon the principle of, or only colorably differing from the said invention; and that the defendant may be decreed to pay to the plaintiffs what, upon taking such account, shall be found due from him.
2. That the amount of the damages sustained by the plaintiffs, by reason of the defendant infringing their said letters patent, beyond the amount which, upon taking the account aforesaid, shall appear to be the profits made by the defendants as aforesaid, may be ascertained by and under the direction of this honorable Court; and that the defendant may be decreed to pay such amount to the plaintiff.
- * 1987 * 3. That the defendant, his servants, agents, and workmen, may be restrained, by the order and injunction of this honorable Court, from making, using, or selling machines for the manufacture of looped fabrics constructed according to or upon the principle of, or upon any principle only colorably differing from, the plaintiffs' said invention, and from selling looped fabrics manufactured by means of any such machine; except such fabrics shall have been manufactured by the plaintiffs, or by some person duly licensed by them.
4. That the defendant may pay the costs of this suit.
5. That the plaintiffs may have such further or other relief as the nature of the case may require.

SECTION XV.

To restrain the Use of Trade-marks, &c.

51. *Bill by foreign plaintiffs, manufacturers in England of "Taylor's Persian Thread," to restrain the use of their names, trade-marks, envelopes, and labels placed on thread of a different manufacture.¹*

To the Judges of the Circuit Court of the United States, for the District of Massachusetts.

J. T. and W. T., of the borough of Leicester, in that part of the United Kingdom of Great Britain and Ireland called England, manufacturers, subjects of Victoria the First, Queen of the said Kingdom, and aliens to each and all of the United States of America, and the territories and districts thereof, bring this bill of complaint against D. C., of F., in the said district of Massachusetts, manufacturer, a citizen of the said State of Massachusetts. And thereupon the said J. T. and W. T. complaining, say, that for many years past they have been very extensively engaged in manufacturing cotton thread at Leicester afore-

¹ See *Taylor v. Carpenter*, 3 Story, 458; *Marshall v. Ross*, L. R. 8 Eq. 651; *ante*, pp. 1648, 1649, and notes.

For a bill to restrain the use or disclosure of a secret process of manufacture, see *Peabody v. Norfolk*, 98 Mass. 452.

said, and vending the same in large quantities, not only in England but throughout the United States, and in particular in the city of B., in said district. That their said thread is, and for many years has been, put up for sale on spools, and labelled on the top of the spools, "Taylor's Persian Thread" in a circle, in the centre of which is the number of the thread, and on the bottom of some of the spools, "J. & W. Taylor, Leicester," and on the bottom of others, "J. & W. Taylor," * with the number of yards of thread on each spool, each spool * 1988 usually containing two hundred yards or three hundred yards of thread, and the spools containing two hundred yards being black and labelled "200 yds." on the bottom of the spool, and those containing three hundred yards being red, and labelled "300 yds." on the bottom of the spools. And on the centre of some of the same labels on the bottom of each spool is stamped the symbol or print of the head and forepart of a lion rampant. And on the centre of other of said labels is stamped a coat-of-arms, the shield whereon contains a lion rampant, and over the same three balls, with the motto, "*In Deo confido.*" And your orators further say, that their spools so marked, stamped, colored, or labelled as aforesaid, are put up for sale in paper envelopes, each containing one dozen of spools; which envelopes are prepared and stamped by your orators for said purpose, and some of said envelopes bear in raised letters stamped on them the inscription, "The Persian Thread, made by J. & W. Taylor, is labelled on the top of each spool, Taylor's Persian Thread, and on the bottom J. & W. Taylor, Leicester. The above is for the protection of buyers against certain piratical articles of inferior quality, fraudulently labelled with the name of Taylor." And on other of the said envelopes is stamped a coat-of-arms representing a shield, the upper division of which is gilt, and contains three red balls, and the lower division thereof is red, and contains the effigy of a lion rampant, with the motto under the same, "*In Deo confido.*" Your orators further show unto your honors that their said thread has been and is manufactured of various sizes and numbers, to meet the wants of the trade; and by means of the care, skill, and fidelity with which your orators have conducted the manufacture thereof for a series of years, their said thread has acquired a great reputation in the trade throughout the United States, and large quantities of the same are constantly required from your orators to supply the regular demand for the consumption of the country. And your orators have established agencies for the sale thereof to the wholesale dealers and jobbers in the cities of B., N. Y., P., and N. O., and in addition thereto your orators employ B. W., now residing in said city of N. Y., as their general agent for the United States, in relation to the sale of their said spool sewing cotton thread; and a mercantile firm of H. & C. are the agents of your orators for the sale of the same in the city of B. And your orators further show unto your honors that their said thread is known and distinguished by the trade and the public as "Taylor's Persian Thread," and that your orators were the original manufacturers thereof, and the first who introduced the same to the public. That your orators' said general agent, on or about the first day of March last past

hearing that complaints were made of the quality of "Taylor's Persian Thread," proceeded to investigate the cause of said complaint,

* 1989 * and thereupon ascertained that a spurious article of spool sewing cotton thread was offered for sale by sundry jobbers in the said city of B., as and for your orators' "Persian Thread," and that such complaints had arisen from the fraudulent imposition of such spurious article upon the public. Your orators further show unto your honors that their said agent further ascertained, upon inquiry, and your orators charge the facts to be, that the said spurious thread so sold and offered for sale in the said city of B., or some of it, was furnished to the said jobbers by said D. C., either by him personally or by one F. D. E., of B., his agent in that behalf, and your orators are informed and believe that the said D. C. has sold the said thread, put up, marked, and designated as aforesaid in the said city of B.; that the said D. C., disregarding the rights of your orators, and fraudulently designing to procure the custom and trade of persons who are in the habit of vending or using your orators' said "Persian Thread," and to induce them and the public to believe that his said thread was in fact manufactured by your orators, has engaged extensively in the manufacture of sewing cotton thread, and caused the same to be put up for sale in envelopes and on spools similar to those used by your orators, and so colored and stamped and labelled as to resemble exactly the said spools and envelopes used by your orators. And the said spool sewing cotton thread, prepared by the said D. C. and sold by him, and which he is engaged in selling as aforesaid, is an exact imitation of the same article which your orators had been manufacturing as aforesaid, and selling in the United States for many years before the said D. C. commenced his said fraudulent imitation thereof. And the said spurious article, although inferior in quality to the genuine Persian Thread manufactured by your orators, can only be distinguished therefrom, so exact is the said D. C.'s imitation as aforesaid, by a careful examination of its quality, and by its falling short in the number of yards contained on each spool from the number marked thereon as the contents thereof. And that the general appearance of the spurious article is the same as that of your orators' genuine thread, and well calculated to deceive those dealing in the purchase and sale thereof. Your orators further show unto your honors that their said general agent has obtained specimens of the said spurious Persian Thread, so sold by the said D. C. That in some of the specimens thus obtained, the thread is put upon black spools, and in other of said specimens the thread is put upon red spools, and said black and red spools are of the same size and appearance with those used by your orators, on the top of which spurious spools there is pasted a round paper label, partly gilt, on which is printed in a circle the words "Taylor's Persian Thread," and in the centre of the circle the number of the thread; and on the other end on the bottom of such

spurious spools there is pasted a round paper label, on some of which is printed in a circle the words, "J. & W. * Taylor, Leicester," and on others, "J. & W. Taylor," with the number of yards of thread on the spools and across *others* of the labels on said

black spools the letters and figures "200 yds." and on said red spools the letters and figures "300 yards" are printed, and in the centre of the said labels there is impressed the figure or symbol of the head and forepart of a lion rampant. And in other of said specimens the thread is put on spools corresponding in all particulars to those herein just before described, except that the labels on the bottom thereof bear a coat-of-arms, the centre of the shield whereof contains a lion rampant, with three balls over the same, and with the motto under, "*In Deo confido.*" Your orators have also obtained specimens of the envelopes in which said D. C.'s spurious thread is put up and sold by him or his agents, which bear the same inscriptions, letters, and stamps that those used and employed by your orators bear. And in all these particulars of the labels on each end of the said spurious spools of thread, and the envelopes in which they are put up, they are exactly like the envelopes and the labels on the respective ends of the spools of your orators' genuine Persian Thread, as hereinbefore stated. Your orators further show unto your honors that they have not yet ascertained the extent to which the said D. C. has carried his said fraudulent imitation and sale of your orators' said thread. But your orators' said general agent has found the same offered for sale to the trade in at least six wholesale or jobbing houses in the city of B., as Taylor's Persian Thread, — from which your orators believe, and they therefore charge, on their belief, that the said D. C. has been and is engaged in selling his said fraudulent and spurious imitation of your orators' Persian Thread to a large extent in various places in the United States, with intent that the same should circulate and be received and used by the public as Taylor's genuine Persian Thread. And your orators further show unto your honors that the fraudulent and inequitable conduct of the said D. C. is not only injuring them in the sales of their said genuine Persian Thread, and the profits which they would otherwise reasonably make thereon; but by the inferior quality and false measure of the said spurious Persian Thread is greatly prejudicing the reputation of your orators' said Persian Thread in the market, and unless the said imitation is discontinued or prevented, will ultimately destroy the character and standing of the genuine article. And your orators also charge that the said spurious article is a fraud and deception upon such of the citizens of the State of Massachusetts, and of the United States, as purchase the same, believing it to be the genuine article manufactured by your orators. And your orators further show unto your honors, that in the month of March last past, having discovered a portion of the aforesaid fraudulent conduct of the said D. C., your orators did file their bill of complaint before the Chancellor of the State of New York, wherein they set forth many of the facts which are in substance * hereinbefore * 1991 stated, and prayed for an injunction to restrain the said D. C. from the aforesaid fraudulent use of the name and trade-marks of your orators, and the same was granted by the Court; and the said D. C. having appeared and filed his answer to the said bill, did therein admit that he had used the name and trade-marks of your orators in manner set forth in the bill aforesaid; but denied that the article manufactured

by him was of inferior quality to that manufactured by your orators; and afterwards an application was made to the Chancellor to dissolve the injunction aforesaid, which last-mentioned motion is now before the said Chancellor, and by reason of the great number of causes depending before him, the aforesaid cause cannot be decided without great delay. And your orators are informed and believe it to be true that the said D. C., residing out of the jurisdiction of the Chancellor of the State of New York, can, with impunity, disregard the injunction aforesaid, and that he has continued to make sale in the city of B. and elsewhere of the said thread, put up, marked, labelled, and appearing precisely like that made, put up, and sold by your orators, and your orators continue to be greatly injured thereby. In consideration whereof, and forasmuch as your orators are remediless in the premises at Common Law, and cannot have adequate relief, save by the aid and interposition of this Court, to the end, therefore, that the said D. C., if he can show why your orators should not have the relief hereby prayed, and may upon his corporal oath, and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the several interrogatories hereinafter numbered and set forth; and the said D. C. and his attorneys, solicitors, counsellors, agents, and servants may be enjoined and restrained from manufacturing, selling, or offering for sale, directly or indirectly, any spool cotton sewing thread manufactured by him, or any person other than your orators, under the denomination of "Taylor's Persian Thread," or on spools with the words "Taylor's Persian Thread," or "J. & W. Taylor, Leicester," or "J. & W. Taylor," printed, painted, written, or stamped, or attached or pasted thereon, or with your orators' said device of a lion rampant, or with their said coat-of-arms thereon; or on spools so made or having any label, printing, or device thereon, in such manner as to be colorable imitations of your orators' said spool thread, usually known as "Taylor's Persian Thread," and that the said D. C. may be decreed to account to your orators for all the profits which he has made by the sale of his said fraudulent imitation of your orators' thread, and all the profits which your orators would have made on the sales of their genuine thread, but for the said D. C.'s inequitable and wanton piracy of their said name, spools, and labels; and that your orators may have their costs and charges in this behalf paid by the said

D. C.; and that your orators may have such further and other * 1992 relief in the premises as to your * honors shall seem meet, and

shall be agreeable to equity and good conscience. May it please your honors to grant unto your orators a writ of injunction, issuing out of and under the seal of this Court, to be directed to the said D. C., his attorneys, solicitors, counsellors, agents, and servants, therein and thereby commanding and enjoining them, under a certain penalty in the said writ to be expressed, according to the foregoing prayer of your orators. May it also please your honors to grant unto your orators a writ of *subpoena*, issuing out of and under the seal of this Court, to be directed to the said D. C., commanding him on a certain day, and under a certain penalty in the said writ to be inserted, personally to be and

appear before your honors in this honorable Court, then and there to answer the premises, and to stand to, abide by, and perform such order and decree therein as to your honors shall seem meet, and shall be agreeable to equity and good conscience.

C. P. C. of Counsel,
C. P. & B. R. C.,
Solicitors. } J. & W. T.,
by W. B., their Agent and Attorney.

United States of America, District of Massachusetts, ss.

Personally appeared before me the above-named B. W., on this second day of December, A. D. 1843, and made oath that this bill in Equity by him signed, in as far as it states matters within his knowledge, is true to his knowledge, and in as far as it states matters within his belief, is true to his best belief. W. W. S., Commissioner, &c.

Interrogatories to be answered by D. C.: —

1. Whether or not have you manufactured and sold in Massachusetts or elsewhere, thread put upon black spools, on one end of each of which spools is pasted, or otherwise fastened, a circular paper label partly gilt, on which is printed in a circle the words "Taylor's Persian Thread," and in the centre thereof the number of the thread, and on the other end of each of said spools is pasted or otherwise fastened a circular white paper label, on which is printed in a circle the words "J. & W. Taylor, Leicester," and across the same label "200 yds.," and in the centre of the same label there is impressed the figure or symbol of a lion rampant?

2. Whether or not have you manufactured and sold in Massachusetts or elsewhere, thread put upon red spools, corresponding in all respects to the black spools described in the preceding interrogatory, except in the color of the spool and in the quantity of thread thereon; and in the letters and figures "300 yds." printed across the said white paper label?

3. What number of each kind of the said spools of thread have you manufactured and sold? State the same accurately, and distinguish the kind and number of the thread, and the number of black spools * and the number of red spools so sold by you since you * 1993 commenced selling the same, and the times when and the places where the same have been sold.

4. What have been the profits made or realized by you on the manufacture and sale of thread put upon spools colored, decorated, and fitted up in the manner described in the first and second interrogatories?

5. To whom and what persons in particular have you sold the said thread put up in the manner described in the first and second interrogatories?

6. Who is, and who has been, your agent in Boston for the sale of your thread put upon spools fitted up in the manner described in the first and second interrogatories?

7. Whether or not did you admit in an answer signed, sworn to, and filed by you in the Court of Chancery in and for the State of New York, to a bill of complaint therein pending wherein the said J. T. and W. T. are complainants, and yourself is defendant, that you have engaged in the manufacture of sewing cotton thread, which you have caused to be

put up for sale on spools similar to those used by the complainants, and so colored, stamped, and labelled as to resemble exactly or as nearly as the same could be done, the said spools used by the complainants, and the said spool sewing cotton, which has been prepared and sold by you is an exact imitation of the same article which the complainants had been selling in the United States many years before you commenced manufacturing your thread ?

8. Whether or not have you manufactured and sold in Massachusetts sewing cotton thread upon black spools and upon red spools, on one end of each of which is fastened a circular paper label, described as in interrogatory numbered 1, and on the other end is fastened a circular paper label on which is stamped a coat-of-arms, the shield whereof contains a lion rampant, and over the same three balls, with the motto under the shield, "*In Deo confido,*" and around said shield is printed in some of said labels, "J. & W. Taylor, Leicester," and in others, "J. & W. Taylor," with the number of yards on said spools ?

9. Whether or no have you put up and sold your sewing cotton thread, colored, stamped, and labelled in all or some of the modes described in this bill in envelopes or wrappers, some bearing in raised letters the inscription, "The Persian Thread, made by J. & W. Taylor, is labelled on the top of each spool Taylor's Persian Thread, and on the bottom J. & W. Taylor, Leicester. The above is for the protection of buyers against certain piratical articles of inferior quality, fraudulently labelled with the name of Taylor," and others bearing a coat-of-arms, the upper division of which is gilt, and has three red balls thereon, and the lower division is red, and has a lion rampant thereon.

C. P. and B. R. C., *Solicitors.*

By Joint Owner in Reference to Joint Property.

52. Statement in a bill to restrain a part of certain joint owners of a fund from transferring the certificates showing their right to it.

Bill states that D. P., the defendant, and one J. C., of whom the defendants are the legal representatives, were the joint owners of a certain ship, called The Boston ; that the ship was built and sailed on joint account, and that it was afterwards seized and detained in Naples, and subsequently sold ; then the said J. C. died, and the defendants became his legal representatives. "That since the decease of the said J. C., under and by virtue of a treaty duly concluded between the Government of the United States and the King of Naples, certain indemnification was and is provided to be paid to the citizens of the United States whose property had been unlawfully seized and detained, or otherwise illegally disposed of in the manner in said treaty set forth, and that by virtue of said treaty, and under the provisions thereof, your orator and the representatives and heirs of said J. C. had jointly and equally a large and just claim for indemnification for the detention, injury, and loss of

freight, and damages consequent thereon, of said ship and cargo at said Naples aforesaid, —, and that said defendants, the said R. C., J. C., C. C., and one E. W., of N. Y., a citizen of the State, of N. Y., —, without the privity of your orator, and claiming to be the heirs-at-law of said J. C. deceased, did make claim and apply to certain commissioners, appointed by said United States, to ascertain and settle the claims of the citizens of the United States under said treaty, to have allowance and award made to them, the said defendants and said E. W., of the full and whole amount of damage and injury sustained by the seizure and detention of said vessel and cargo, as aforesaid — and did then and there present to said commissioners the register of said vessel, so made as aforesaid, in the said name of the said J. C., deceased, as evidence that said vessel was the sole property of him, the said J. C., whose sole heirs said defendants and said E. W. claimed to be, and thereupon such proceedings were had that said commissioners, relying upon said register as evidence of the sole ownership by said J. C., deceased, of said ship, did allow and award to said defendants and said E. W. a large sum of money, for and on account of the seizure and detention of said vessel and cargo, as aforesaid — and thereupon, pursuant to law in such case made and provided, the Secretary of the Treasury of the said United States did, thereafterwards, pursuant to said award, issue to said defendants and said E. W. certain certificates, purporting * to contain that said defendants and * 1995. said E. W. were entitled to be paid, and that they and their assigns should be paid, out of the moneys received under said treaty in certain proportions or specified sums, the amount of nine thousand four hundred and thirty dollars and eighty cents. And your orator further shows, that said defendants and said E. W. have received said certificates, and now hold the same, and that your orator was justly, equitably, and in good conscience entitled to have received and been allowed and awarded one full moiety or half part of the amount so awarded to the defendants and said E. W., and that said certificates, or one moiety thereof in amount, and one moiety of all sums by said defendants and said E. W., or either of them, that have been or shall be received under and by virtue of said award and certificates, has been and will be received by said defendants and said E. W., in trust for your orator, as jointly and equally interested with said J. C., deceased, in such vessel, her freight and earnings."

Bill prays for a writ of injunction to defendants, restraining them and each of them from any and all alienations, transfers, assignments, or other dispositions of the said certificates, as also from collecting or receiving by them, or either of them, or any person in their behalf, of any sums of money, payable under or by virtue of the said certificates.¹

¹ Affidavits were filed in this case to establish the utter insolvency of one of the defendants, and the low character and irresponsibility of the others. Poor v. Carleton, 3 Sumner, 70.

SECTION XVII.

Bill by Assignee to protect the Estate of Insolvent Debtor.

53. *Bill for an injunction to restrain a citizen of Massachusetts from availing himself of an attachment of personal property in another State, in an action against an insolvent debtor, and thus preventing the same from coming to the assignee.²*

To the Honorable the Justices of the Supreme Judicial Court, sitting in Equity.

Humbly complaining, show unto your honors the plaintiffs, P. B., of B., in our county of S., merchant, and W. D. and H. J., both of said B., counsellors-at-law, against C. F. and D. W., both of W., in our county of W., merchants, and partners under the style of C. F. & Co.

That they were, on the first day of July last past, legally * 1996 appointed *assignees, under the insolvent laws of this commonwealth, of J. N. and P. H., of said B., and S. D., of said W., merchants, and partners under the style of N., M., & Co., insolvent debtors, and that they accepted said trust.

That the said N., M., & Co., on the first day of June last, were insolvent, and had stopped payment.

That on said first day of June Messrs. G., E., & P., of P., in the State of P., were, and now are, indebted to the said N., M., & Co., in the sum of three thousand dollars.

That the said C., F., & Co. were, on the said first day of June, and still are, creditors of said N., M., & Co., in the sum of twenty-two hundred dollars, and that they then knew that the said N., M., & Co. were insolvent and in contemplation of insolvency, and had stopped payment, and had reason to believe, and did believe, that proceedings in insolvency were about to be instituted by or against said N., M., & Co.

That the said C. F. & D. W. are both [citizens] of this Commonwealth, and that their debt against said insolvents was contracted and is payable in this Commonwealth.

That the said F. & W., with intent to obtain a preference over the other creditors of said insolvents, and to avoid the operation of the insolvent laws of this Commonwealth, caused a suit to be instituted against the said N., H., & D., in said P., and caused an attachment by the process of foreign attachment to be made upon the effects of said N., M., & Co., in the hands of said G., E., & P., of said P., for the purpose of collecting said debt, due by said G., E., & P., to said N., M., & Co., to the prejudice of the other creditors of said insolvents, said suit and attachment being prior to said insolvency proceedings, and still pending.

Wherefore the plaintiffs pray that the said N., H., & D. may be directed by a decree of this honorable Court to convey to them, the said

² See Dehon v. Foster, 4 Allen, 545; 7 Allen, 57; Means v. Dowd, 128 U. S. 272.
1990

assignees, the debt of said G., E., and P., for the benefit of the creditors of said insolvent debtors, and to be held and distributed by your complainants according to law.

And that the said F. & W. may be restrained by the order and injunction of this honorable Court from levying any execution which they may obtain in said action upon said credits in the hands of said G., E., & P., and to be ordered and decreed to relinquish and abandon said attachment, and that the plaintiffs may have such other and further relief in the premises as to your honors may seem meet, and this case shall require.

May it please your honors to grant unto the plaintiffs a writ of *subpoena*, to be directed to the said J. N., P. H., and S. D., and to the said C. F. and D. W., thereby commanding them to be and appear before your honors in the Supreme Judicial Court to be holden in and for the county of Worcester, on a day, and under a pain therein specified, and * then and there full, true, direct, and perfect answers to make, but not under oath, to all and singular the premises, and further, to stand to, perform, and abide such further order, direction, and decree therein, as to your honors shall seem meet.

SECTION XVIII.

Bills by Next of Kin for Account and payment of Distributive Shares.¹

- 54. Bill by intestate's brother and sisters against his widow and administratrix for their distributive shares of his estate; and for an injunction against her and the bank, or other corporation, to restrain the sale of a sum of stock standing in deceased's name, under a suggestion of her intention to leave the country.**

To, &c.

Humbly complaining, show unto your honors, the plaintiffs S. M., of, &c., C. M., of, &c., widow, and A. L., of, &c., widow, that A. M., late of, &c., gentleman, was, in his lifetime and at the time of his death, possessed of and well entitled to a considerable personal estate, consisting of moneys in the funds, debts due to him, household goods,

¹ See for substance of bill in such case, admitting and alleging grounds to avoid a settlement and adjudication in the Probate Court, *Gould v. Gould*, 3 Story, 516; see also the answer in that case. The Courts of the United States, as Courts of Equity, possess jurisdiction to maintain suits in favor of legatees and distributees for their portions of the estate of the deceased, notwithstanding there may be, by the local jurisprudence, a remedy at Law on the administration bond, in favor of the party. This class of cases is of concurrent and not of exclusive jurisdiction. *Pratt v. Northam*, 5 Mason, 95. The bill in this case charged that all the debts of the

testator had been paid, except that due to the plaintiffs, and prayed for an account of the personal estate of the testator, and that if the same, exclusive of, &c., was sufficient to pay the plaintiffs, that the executors might be decreed to pay accordingly; or in case of a deficiency of personal estate, that the executors might be decreed to sell enough of the real estate to make up the deficiency; and for general relief; see also *Allen v. Simons*, 1 Curtis, 122; *Mallett v. Dexter*, 1 Curtis, 178; *Stearns v. Page*, 1 Story, 204; *Sands v. Champlin*, 1 Story, 376; *Gould v. Gould*, 3 Story, 516, 537; *Langdon v. Goddard*, 2 Story, 267.

plate, linen, china, wearing apparel, and divers other effects of a considerable amount and value, and particularly was possessed of a large number of shares in the stock of _____. And the plaintiffs further show that the said A. M., in and about the month of, &c., departed this life, intestate, and without issue, leaving F. M., his wife, one of the defendants hereinafter named, and the plaintiff, his brother, and the plaintiffs, his sisters, and only next of kin him surviving. And the plaintiffs further show, that since the death of the said intestate, the said F. M., his wife, has obtained letters of administration of the goods, chattels, rights, and credits of the said intestate to be granted to her, by and out of the proper Court, and has, by virtue thereof, possessed

* 1998 herself of the personal * estate and effects of the said intestate to a very large amount and value, and much more than sufficient to pay and satisfy his just debts and funeral expenses, exclusively of the said shares of stock. And the plaintiffs further show that being entitled as brothers and sisters of the said intestate to a distributive share of his personal estate, the plaintiffs have frequently, by themselves and their agents, applied to the said F. M., and requested her to come to a full and true account with the plaintiffs for the personal estate and effects of said intestate, and to pay them respectively one-third part each of one moiety of the clear residue thereof, with which just and reasonable requests the plaintiffs hoped the said F. M. would have complied. BUT NOW SO IT IS, &c. And the said defendant pretends that the personal estate and effects of the said A. M. were small and inconsiderable, and not more than sufficient to pay and satisfy his debts and funeral expenses, and that she has applied all such personal estate and effects in a due course of administration. Whereas the plaintiffs charge the contrary thereof to be truth, and so it would appear if the defendant would set forth, as she ought to do, a full and true account of all and every the personal estate and effects of the said intestate, which have been possessed or received by the said defendant, or by her order, or to her use, and of her application thereof. And the plaintiffs further charge that the said F. M. has declared to several persons that she means to obtain a transfer of the said shares of stock, and to sell and dispose of the same and to withdraw herself to _____, with the produce thereof; and the corporations, in which said stock is held, intend to permit her to make such transfer. All which actings, &c.

And that the defendants may answer the premises, and that an account may be taken by and under the direction of this honorable Court of the personal estate and effects of the said intestate, A. M., possessed by or come to the hands of the said defendant F. M., his widow and administratrix, or to the hands of any other person or persons, by her order or for her use; and also an account of the said intestate's debts and funeral expenses, and that the said intestate's personal estate may be applied in a due course of administration, and that the clear residue thereof may be ascertained, and that the plaintiffs respectively may be paid one-third part each of one moiety of such clear residue, and that in the mean time the said defendant F. M. may be restrained by the injunction of this honorable Court from selling or

disposing of or transferring the said stock, and that the — may be restrained from permitting such sale or transfer. [And for further relief.] May it please, &c.

[Pray subpoena and injunction against F. M., and the said — (corporations).]

* 55. Bill by some of the next of kin of an intestate for payment * 1999 of their shares of the estate. [Modern English Form.]

1. A. B., late of, &c., deceased, was, at the time of his death, possessed and entitled of and to a considerable personal estate.

2. The said A. B. died on the — day of — [a widower and], intestate, leaving the plaintiffs and — and —, his children and sole next of kin, him surviving.

3. On the — day of —, the defendant procured letters of administration to the goods, chattels, and credits of the said A. B. to be granted to him by the proper Court for that purpose, and the said defendant thereby became and now is the sole legal personal representative of the said A. B.

4. The defendant, as such administrator as aforesaid, has taken possession of all the movable chattels of the said A. B., and has received certain sums of money in respect of debts which were owing to the said A. B. at the time of his decease.

5. The assets of the said A. B., which have come to the hands of the defendant, were and are much more than sufficient for payment of all the debts and funeral expenses of the said A. B., and he has paid or ought to have paid the same.

6. The defendant has, in fact, in his hands, a large surplus or residue in respect of the intestate's personal estate, which is divisible, and ought to be divided amongst the plaintiffs and the said — and —, as his sole next of kin.

7. The plaintiffs have applied to the defendant to furnish them with an account of the personal estate of the intestate, and of the application thereof, and to divide the residue thereof amongst the plaintiffs and the said — and —, but he has refused so to do.

Prayer.

The plaintiffs pray as follows:—

1. That an account may be taken of the personal estate of the intestate, come to the hands of the defendant, or of any person or persons by his order or for his use.

2. That an account may be taken of the debts and funeral expenses of the intestate.

3. That the clear residue of the personal estate of the intestate may be ascertained, and that one equal — part of such residuary estate may be decreed to be paid to each of the plaintiffs, and that another equal — part thereof may be decreed to be paid to the defendant, and to each of them, the said — and —.

4. [Prayer for general relief.]

* 2000 * 56. *Bill by feme covert and her children for a settlement, against the assignee of her husband, of her share in personal property, derived under a will. [Modern English Form.]*

In Chancery.

Lord Chancellor.

Vice Chancellor.

[*Title.*]

Humbly complaining, show unto his Lordship, A. M., wife of —, the defendant, C. M., by — of —, her next friend, and D. E. and F. G., infants under the age of twenty-one years, by the said —, their next friend.

[*The bill states a case, showing that A. M. has become entitled to a share in the residuary estate of the testator, that C. M., her husband, has become bankrupt, and the defendants, — and are his assignees.*]

No settlement or other provision for the due support and maintenance of the plaintiff A. M. was made on the occasion of her said marriage with the defendant C. M., or has at any time since been made.

The plaintiff A. M. is therefore advised and submits, on behalf of herself and the other plaintiffs, her children, that they are entitled to have a proper settlement of part of the aforesaid sum of money, which is now held by the defendant, — [*the executor of the testator*], as the part and share of the plaintiff A. M. in the residuary estate of the said testator.

The plaintiffs have, accordingly, frequently applied to the said last-named defendant, and also to the said — and — [*the assignees*], and have requested that they would consent and agree that a proper settlement should be made of the said sum, and in particular the plaintiffs have requested the said — [*the executor*], not to pay over the whole share of the said A. M. to the said last-named defendants, but to retain the same until such settlement or provision be made thereout as aforesaid; but they refused to comply with such requests.

Prayer.

The plaintiffs pray as follows : —

1. That it may be declared that the plaintiff A. M. is entitled, for the benefit of herself and the other plaintiffs, her children, to have a settlement made upon them and her other issue, if any, by the said C. M., out of the part or share to which the plaintiff A. M. is entitled in the residuary estate of the said testator, now remaining in the hands of the said — [*the executor*].

2. That the proper directions may be given for the preparation and execution of such settlement.

* 2001 * 3. That in the mean time the said defendant — [*the executor*] may be restrained by the order and injunction of this honorable Court from paying over or transferring to the defendants —

and —— [*the assignees*], or either of them, the said share of the plaintiff A. M. in the said residuary estate and effects, or any part thereof.¹

4. [For further relief.]

SECTION XIX.

Bills of Interpleader.

57. To settle and adjust claims to money due under a bond or obligation — offer of money — injunction against suit.² [Modern English Form.]

Between Sir H. M. and others Plaintiffs,
and

A. B., H. J., and M. J. his wife [and
three children, infants], T. B., S. B.,
and R. J., Defendants.

[The bill set forth a bond of the plaintiffs who were partners together in trade, for payment of £18,000, to M. J., when she was unmarried; the marriage of the defendant H. J. and M. J., his wife, and the issue of the marriage, * viz., the three infant defendants; a settlement * 2002 made previously to their marriage, by which the bond, together with

¹ *Equity for a settlement.* — 1. The wife's equity for a settlement does not depend on any right of property in her, but rests on the control which Courts of Equity exercise over property falling under their dominion, and it is an obligation which the Court fastens upon the property, but not upon the right to receive. *Osborn v. Morgan*, 9 Hare, 432; 16 Jur. 52; 31 L. J. Ch. 218; *ante*, Vol. I. p. 91.

2. As to the property to which this right extends, see *Barrow v. Barrow*, 18 Beav. and S. C. on appeal, 24 L. J. Ch. 287.

3. When it attaches, see *ante*, Vol. I. p. 91; *Lloyd v. Mason*, 5 Hare, 149; *Baker v. Boyldon*, 8 Hare, 210.

4. As to amount of proportion of fund to be settled, see *ante*, Vol. I. p. 102.

For instances where the Court has given the whole fund: *Bankruptcy of husbands*, *Re Wilson*, 1 Jur. N. S. 569, V. C. S.: *Purchaser from assignee of husband, an insolvent*, *Francis v. Brooking*, 19 Beav. 347; *Scott v. Spashett*, 3 MacN. & G. 599; *Gent v. Harris*, 10 Hare, 383: *Divorce à mensa et thoro obtained by the wife*, *Barrow v. Barrow*, 18 Beav. and 24 L. J. Ch. 267; *In re Lewin's Trust*, 20 Beav. 378.

Where the fund was under £200, and the husband had become bankrupt, *In re Cutler*, 14 Beav. 220; 15 Jur. 911.

Where a part only of the fund has been

settled, *Ex parte Pugh*, 1 Drew. 232; *Aubrey v. Brown*, 25 L. J. Ch. 446; 4 W. Rep. 446, V. C. W.

² *Terms or provisions of settlement.* — In settling a wife's property under an order of the Court giving effect to her equity to a settlement, there is no established rule entitling her to have the property limited, in the events of failure of issue of the marriage and of her dying in her husband's lifetime, upon such trusts as she shall appoint, and subject thereto upon trust excluding the husband from any interest in the settled portion of the property. In the absence of special circumstances, the limitation in the events above-mentioned should be to the husband. *Carter v. Taggart*, 1 De G. M. & G. 286; 21 L. J. Ch. 216.

² This is the bill in *Meux v. Bell*, 6 Sim. 175. It was settled by the late Mr. Jacob. In the case referred to, Sir Launcelot Shadwell V. C., upon the argument of a demurrer by one of the defendants, held, that it was not necessary for the plaintiff upon his bill to offer to pay the money into Court, although, before he took any step in the cause, it was necessary that he should do so. The ordinary practice is, however, to offer by the bill to pay the money into Court. It will be perceived, too, that no case is suggested by the plaintiff for or on the part of any of the defendants.

the principal money and interest thereby secured, was assigned to the defendants T. B., S. B., and R. J., upon certain trusts for the benefit of the said M. J., her said husband, and their issue, "but the plaintiffs are not acquainted with the particulars of the said settlement, and crave leave to refer thereto."]

The said T. B., S. B., and R. J. claim to be entitled under the said settlement to receive the principal moneys and interest secured by the said bond.

The plaintiffs have lately discovered that the said bond or obligation is now in custody or possession of the defendant A. B., and he claims to be entitled thereto, and the principal money and interest thereby secured.

On or about, &c., a notice in writing was served upon the plaintiffs, by the solicitor of the last-named defendant, which is in the words following, &c. [*Claiming the money.*]

[*Statement of applications to the plaintiffs by the defendant A. B., and of threats to prosecute an action or suit, and that he has actually sued out a writ in the Court of —— in the names of the said H. J., and M. J. his wife, against the plaintiffs.*]

The other defendants, T. B., S. B., and R. J., also threaten and intend to commence and prosecute some proceedings at Law or in Equity against the plaintiffs, on the recovery of the amount due from the plaintiffs upon the said bond. Plaintiffs submit that the said defendants ought to interplead between themselves, the plaintiffs being ready and hereby offering to pay the same to such of the defendants as this honorable Court may determine to be entitled thereto.

The said last-named defendants ought to set forth the particulars of their respective claims to the moneys due upon the said bond or obligation, and how to make out the same.

Prayer.

1. That the defendants may answer the premises, and that the defendants may be decreed to interplead and settle and adjust between themselves their right or claims to or in the money due or payable under the said bond or obligation, the plaintiffs being ready and willing, and hereby offering to pay the moneys due and payable under the same to such of the said defendants as this honorable Court may determine to be entitled thereto.

2. That the said defendant A. B. may be restrained by the order and injunction of this honorable Court from prosecuting the said action so commenced by him as aforesaid against the plaintiffs; and that all the said defendants may be respectively restrained by the order and injunction of this honorable Court from prosecuting or commencing any other action or actions or legal proceeding or proceedings against

* 2003 * the plaintiffs, or any or either of them, for the recovery of the moneys due or to become due or payable under the said bond or

obligation, or any part thereof, or otherwise concerning the matters aforesaid.¹

3. [For general relief.]

Common affidavit to be annexed to bill in an interpleader suit.

[Title, &c.]

I, ——, the above-named plaintiff, make oath and say, that the bill in this suit [or, the bill hereunto annexed] is not filed by me in collusion with any or either of the defendants in the said bill named, but such bill is filed by me of my own accord for relief in this honorable Court.²

Another form of affidavit to bill of interpleader.

In Chancery [or Equity].

Between J. C. Plaintiff,
and
—— Defendants.

The said J. C. maketh oath, and saith that he has exhibited his bill of interpleader against the defendants in this cause without any fraud or collusion between him and the said defendants, or any or either of them; and that the said J. C. hath not exhibited his said bill at the request of the said defendants, or of any or of either of them, and that he is not indemnified by the said defendants or by any or either of them, and saith that he hath exhibited his said bill with no other intent but to avoid being sued or molested by the said defendants, who are proceeding, or threaten to proceed, at Law against him for the recovery of the rent of the said ——, in the bill mentioned.

Sworn, &c.

J. C.

58. *Prayer in a bill of interpleader by an insurance company. [Modern English Form.]*

1. That the defendants —— and R. S. may interplead together, and that it may be ascertained to whom the said sum of, &c., and the interest * thereon belongs and ought to be paid, and that the * 2004 plaintiff, on behalf of the said Atlas Insurance Company, may be at liberty to pay the said sum of, &c., with interest thereon at the

¹ In *Bignold v. Audland*, 11 Sim. 23, it was held, that, where a bill of interpleader is filed by the secretary or officer of a company on their behalf, the affidavit to be annexed to the bill ought to be, not that the plaintiff does not collude, but to the best of the plaintiff's knowledge and belief the company do not collude with the defendant, and if the bill is filed respecting a sum of money in respect of which interest is recoverable at Law, the bill

should contain an offer to pay interest, as well as the principal sum. The practice is for counsel to move, *ex parte*, for leave to pay the money into Court and for an injunction.

² In *Stevenson v. Anderson*, 2 V. & B. 407-410, Lord Eldon observed that the form of affidavit in Harrison's Practice seemed to go too far in stating that the bill was filed without the "knowledge" of either of the defendants.

rate of — per cent per annum, from the — day of —, into the Bank of England in the name of the Accountant-General of this honorable Court, in trust in this cause (which the plaintiff hereby offers to do), for the benefit of such of the said parties as shall appear to be entitled thereto.

2. That the defendants may be restrained by the order and injunction of this honorable Court from further proceeding with the said action so commenced, &c., and from commencing any other action or actions at Law against the said company, or the secretary thereof, in respect of the matters aforesaid.

59. Affidavit of secretary to public company to be annexed to bill in inter-pleader suit.

I, H. D., of, &c., make oath and say, that I am secretary of the — Insurance Company, and that I do not, and to the best of my knowledge and belief the said Insurance Company do not, nor do or does any members or member thereof, collude with either of the defendants named in the bill hereunto annexed, but such bill is filed by me, on behalf of the said company, of my own accord for relief in this honorable Court [*or, if the company is plaintiff, say, "but such bill is filed by the said company of its own accord, for relief, &c."*].

60. Statements in a bill by a purchaser against different persons claiming payment for the property purchased.¹

Bill states that, on the — day of —, the plaintiff purchased of the defendant Salter a cargo of coal, then on board of a vessel, at ten dollars per chaldron, amounting to eleven hundred and twenty-five dollars, payable in a note at thirty days. The coal was delivered to the plaintiff, who paid Salter one hundred dollars on account. That the defendants P. & S. Schermerhorn afterwards issued an attachment against W. W. as an absent debtor, and the defendants F. & B. caused another attachment to be issued against W. W. as an absconding debtor, and warrants were issued in the usual form to the sheriff of —, who gave notice to the plaintiff not to pay over to any person except the sheriff, any property or money of W. W., and the plaintiff was informed by the sheriff, and the attorneys of the defendants P. & S. S., and F. & B., that the coal so purchased by him was the property of W. W., for whom the defendant Salter was only an agent, and that the plaintiff would be held liable if he paid the residue of the money * 2005 to Salter. That the plaintiff * applied to the defendants for leave to pay the money to Salter without responsibility; and he also, applied to Salter, to relieve or secure him against the operation of the attachment, and any further responsibility, which they respectively refused to do, and that Salter had commenced a suit at Law

¹ Richards v. Salter, 6 John. Ch. 445.

against the plaintiff to recover the money. The plaintiff averred that he was always ready and willing to pay the money if he could do so safely, and offered to pay it into Court. He prayed for an injunction to restrain the suit at Law, and for relief generally. The bill was accompanied with the usual affidavit, denying any collusion and indemnity, &c. Upon the plaintiff's paying the money into Court, an injunction was granted.

61. Prayer that the defendants may interplead — that plaintiff may be at liberty to pay the arrears of rent into Court, first deducting thereout certain sums for repairs and land-tax — that possession may be delivered to the party entitled, and an allowance made to the plaintiff for certain articles — and for an injunction to restrain proceedings in ejectment and distresses being made upon the premises.

And that the said several defendants may be decreed to interplead touching their said several claims, and that plaintiff may be at liberty to pay the several sums now justly and fairly due from him for the rent of the said messuage or tenement and premises into the bank, in the name and with the privity of the Accountant-General [or of the clerk] of this honorable Court, in trust for the benefit of the persons or person entitled thereto, subject to the further order of this Court, after deducting thereout in the first place, the aforesaid sum of —, to be allowed unto plaintiff for repairs pursuant to the said agreement, together with all sums of money expended and advanced by the plaintiff for land-tax and other necessary outgoings in respect of the said premises. And that plaintiff may be at liberty to quit the possession of the said premises, and that possession thereof may be delivered up to such person or persons as this honorable Court shall direct or appoint. And that plaintiff may have a satisfaction or allowance made out unto him out of the rent of the said premises for the several articles hereinbefore, and in the said first agreement particularly mentioned, which have been provided by plaintiff at his own expense for the said premises. And that in the mean time the said defendants S. O. and T. C. may be restrained by the order or injunction of this honorable Court from all further proceedings in the aforesaid action of ejectment brought against plaintiff, and that they and all the said other defendants may be in like manner restrained from making any distresses or distress upon the said messuage or tenement and premises, and from commencing or prosecuting any action or actions at Law against plaintiff to recover the rent of the said premises, or to turn * plaintiff out of possession * 2006 thereof, or otherwise from proceeding at Law against the plaintiff touching any one of the matters aforesaid. And that all proper and necessary directions may be given for the purposes aforesaid. [And for further relief.]

62. Amended bill of interpleader — by an executor — praying injunction against suits, and offering to bring fund into Court.

SUPREME JUDICIAL COURT. April Term, 1861.

SUFFOLK, ss.

In Equity.

C. G. L., Executor of I. T. v. I. T. et al.

And now the said plaintiff, with the consent of the defendants, and by leave of Court, files his amended bill in the words and figures following, to wit:—

This plaintiff alleges that I. T., of Boston, merchant, deceased, in and by his last will and testament, which was duly proved and allowed, appointed the plaintiff, and F. D., and C. B., whom he hath survived, executors; and among other things, made a provision for the benefit of his son Andrew, in the words following, to wit: "I give to my son Andrew . . . forty thousand dollars, of which one-half, or twenty thousand dollars, is to be placed by my executors with the Massachusetts Hospital Life Insurance Company in such manner that my said son shall receive the interest and income thereof during his life, and at his decease the principal shall be paid to his lawful heirs; the other half, or twenty thousand dollars, is to be paid to my said son for his own use, and to be at his own disposal, the whole forty thousand to be so placed and paid, as aforesaid, within one year after my decease, and as the same can be raised to the best advantage:" as will more fully appear by reference to the said will.

That the said executors, on the sixth day of December, A. D. 1832, deposited the said sum of twenty thousand dollars with the said corporation for the benefit of the said Andrew, and received a receipt as and for an annuity, in trust, a copy of which is filed hereunto, and that the interest and income thereof was duly paid to the said Andrew during his lifetime.

That, as the plaintiff has been informed, the said Andrew during his lifetime cohabited with a person named Katharina Bayerl, in parts beyond the seas, and that the said Katharina, on or about the twentieth day of September, 1848, bore a female child, afterwards named Anna, which she alleges to be the child of the said Andrew, and which, as she alleges he afterwards acknowledged as such; but the plaintiff has no knowledge of his own concerning these alleged facts.

* 2007 * That afterwards, as the plaintiff has been informed, the said Katharina bore a male child, which was christened on the twenty-sixth day of May, 1851, by the name of Andreas, and as an illegitimate child of the said Katharina, which she also alleges to be the child of the said Andrew, and that he afterwards acknowledged the same to be his son, but the plaintiff has no knowledge of his own concerning these alleged facts.

That afterwards, on the fourth day of August, 1851, the said Andrew and Katharina, at the city of Frankfort-on-the-Main, in parts beyond the seas, made and signed a certain declaration in the words and figures following, to wit:—

"Marriage Agreement."

"We, the undersigned, Andrew Thorndike, of the city of Boston, county of Suffolk, and State of Massachusetts, aged sixty years, and Katharina Bayerl, of the city of Mainz, in the Grand Duchy of Hesse, aged twenty-six years, do hereby declare, that we have truly and solemnly promised to marry each other, and that we now both wish to enter in the state of marriage: and that we desire, in conformity with the laws of the United States of America, that the civil act of our union in marriage may be executed in the usual form before Ernest Schwendler, Esquire, the duly appointed Consul of the United States of America for this Free City. We therefore confirm, by these presents, our mutual consent to the desired conjugal union, and do sincerely and solemnly promise scrupulously to fulfil the duties of husband and wife, by virtue of our respective seals and signatures.

"Frankfort-on-the-Main, Aug. 4, 1851.

"(Signed) ANDREW THORNDIKE,
" KATHARINA BAYERL.

"Sealed and signed in presence of

"(Signed) G. LINDHEIMER,
" I. ECKHARDT,

as witnesses.

"The foregoing marriage agreement has, therefore, been entered accordingly, and duly subscribed by the aforesaid parties, not only in the Consular Register, but also on two duplicate copies of the present marriage act, delivered to the said parties at their request.

"In testimony whereof, I have hereunto set my hand and seal of office, at Frankfort-on-the-Main, this fourth day of August, 1851, in the seventy-sixth year of the Independence of the United States.

"(Signed) ERNEST SCHWENDLER, U. S. Consul. [L. s.];"

which was entered in the Register of the American Consulate in said city, and thereafterwards, as the plaintiff is informed, the said * Andrew and Katharina lived and cohabited together as man * 2008 and wife until his decease, which occurred on or about the twenty-first day of July, 1854.

That by his last will and testament, which has been duly proved and allowed in this county, the said Andrew appointed N. I. B., of said Boston, and C. B., since deceased, executors of his will, who were duly appointed as such, and he made divers provisions therein for the benefit of his wife Katharina, and son Andreas, so called, but none for the benefit of the said Anna, who is not mentioned therein.

That the surviving executor of the said Andrew, as the plaintiff is informed, claims the right to receive from the plaintiff the said sum of twenty thousand dollars, on the ground that by the will of the said I. T. the same was absolutely given to the said Andrew, and formed a part of his estate, subject to his disposal by will.

That the said Anna Bayerl, alias Thorndike, as the plaintiff is informed,

2001

claims that she is the daughter of the said Andrew and Katharina, that they were afterwards lawfully married, and that he recognized her as his child after such marriage, and is, therefore, a lawful heir; and that she and her brother, the said Andreas, are entitled to have and receive the said sum of twenty thousand dollars, alleging that by the will of the said Israel a life interest on said sum only was given to the said Andrew, with remainder to his lawful heirs.

That the said Andreas Bayerl, *alias* Thorndike, as the plaintiff is advised, insists that he is the son of the said Andrew and Katharina, that they were afterwards lawfully married, and that he, the said Andrew, afterwards recognized the said Andreas as his only child and heir-at-law, and that as such he is entitled to have and receive the whole of the said sum to his own use.

And the said Andrew, at the time of his death, had certain brothers and sisters then living, to wit: I. T., of the city of New York, merchant, a brother; A. L., of said Boston, widow, a sister; E. B., wife of the said N. I. B., and S. E. M., wife of R. M. M., of said Boston, merchant, surviving children of a deceased sister; E. F., E. A. T., and C. A. T., now or lately of Ravenna, Portage County, Ohio, sons of a deceased brother; E. T., M. A. B., wife of M. S. B., now resident at Paris, in the Empire of France; E. T. T., now resident in parts unknown; A. D. S., wife of E. de S. now resident at Paris, aforesaid; M. S. P., wife of R. T. P., of said Boston, daughters of a deceased brother; C. T., and A. T., a brother, who deceased after the said Andrew, having first made his will, which was duly proved in this county; and S. T. D., of said Boston, appointed executor thereof.

That the said brothers and sisters, and representatives of deceased brothers and sisters, or some of them, insist that by the will of said I. T. the said Andrew was entitled only to a life-interest in the said sum

of twenty thousand dollars, and that the remainder was given to
* 2009 his * lawful heirs; that the said Andrew and Katharina were

never lawfully married, and that the said Anna and Andreas are not the children of the said Andrew, or if either of them are, or is, that she or he were not born in wedlock, but were illegitimate, and not entitled to claim as lawful heirs, and that the brothers and sisters of the said Andrew, and the representatives of deceased brothers, are the lawful heirs, and as such are entitled to have and receive the said sum of twenty thousand dollars to their own use.

That the plaintiff is informed that the property of the said daughters of the said C. T. was settled in trust to their separate use, and that the said M. S. B. is the trustee of that belonging to his wife; that E. A. B., of said Boston, is trustee for the benefit of the said E. T. T. and A. D. S.; and that J. P., of said Boston, is trustee for the benefit of the said M. S. P.; but whether the said settlements, any or either of them, would include the interest to which the said daughters would be entitled if declared heirs-at-law, as aforesaid, the plaintiff is not advised, and does not know.

That J. G., of said Boston, counsellor-at-law, has been duly appointed, by the Court of Probate for this county, guardian of the said Andreas,

and as such has demanded payment from the plaintiff of the said sum of twenty thousand dollars; that the said I. T., before the filing of the original bill, had brought a suit at Law against the plaintiff, claiming his proportionate part of said sum as one of the lawful heirs; by reason of which the plaintiff is exposed to great risk, and danger of trouble, expense, and litigation, and that various claims have been or may be preferred against him on behalf of some of the other persons herein-before mentioned.

That the plaintiff is ready and willing to pay the said sum of money to such of the said persons, if any, as shall be found legally entitled to receive the same; but by reason that they persist in their several adverse claims, the plaintiff is advised that he cannot safely pay the same, or any part thereof, to either of them; that the various persons claiming the same ought to interplead touching their respective rights, in order that the plaintiff may be informed to whom the same ought to be paid; and that they and each of them ought to be restrained by the order and injunction of this honorable Court from commencing or prosecuting any suit at Law or in Equity against the plaintiff in respect to the matters aforesaid.

To the end, therefore, that the said possible heirs-at-law, Andreas Thorndike, *alias* Bayerl, and his guardian, the said J. G.; the said Anna Thorndike, *alias* Anna Bayerl; the said N. I. B., surviving executor of the will of the said Andrew Thorndike; the said I. T.; A. L.; E. B. and her husband, the said N. I. B.; the said S. E. M. and R. M. M.; the said E. A. T. and C. A. T.; the said M. A. B. and M. S. B.; E. T. T.; A. D. S. and E. de S.; and the said E. A. B., trustee * for the said E. T. T. and A. D. S.; the said M. S. P. * 2010 and R. T. P., and J. P., her trustee; and the said S. T. D., executor of the will of the said A. T., may full and direct answer make to all and singular the premises, the plaintiff waiving the benefit of answers upon oath, and may set forth their several and respective claims, or disclaim all interest in and right to the said sum of money, or any part thereof, and that such of them, if any, as claim adverse interests therein may be decreed to interplead together, and that it may be ascertained, in such manner as the Court shall direct, to which of them the said sum of money ought to be paid; and that the plaintiff may have leave to pay the same into Court, which he offers to do, for the benefit of such of the parties as shall be found or decreed to be entitled thereto; and that the said persons may, in the mean time, be restrained from commencing or prosecuting any suit at Law against the plaintiff in his said capacity, touching the said sum of money; and that he may have such other relief in the premises as the nature of the case may require.

May it please your honors to grant unto the plaintiff a writ of *subpæna*, directed to the said several persons last named, commanding them to be and appear before this honorable Court, at a certain time and place, to make answer in the premises, and abide the order and decree of the Court therein.

F. C. L., } *Solicitors for*
A. D., } *Plaintiff.*
2003

63. Bill by an executor, in the nature of an interpleader to obtain instructions and advice of Court.¹

To the Honorable the Justices of the Supreme Judicial Court, sitting in Equity.

W. T. A., of B., in the county of S., Esquire, brings his complaint against S. B., of said B., widow, and J. G. B., of said B., single woman, and W. W. S., of said B., and Hester V. A., of M., in the State of New Jersey, wife of Henry V. A., physician, and said Henry and C. W., of the city and State of N. Y., and the said H. V. A., as trustee of said C.

And the plaintiff shows that on the twenty-sixth day of March, A. D. 1860, T. W., of said B., Esquire, made his last will and testament; that T. W. departed this life on the thirtieth day of said March; that on the thirtieth day of April, of the same year, the said will was admitted to probate, and letters testamentary issued to the plaintiff, the executor therein named.

2. That among other provisions of said last will and testament * 2011 are *these following, &c., as by reference to a certified copy of said will in Court to be produced will more fully appear.

3. That the real estate devised to the plaintiff, upon the trusts in said will recited, was, at the time of the decease of said T. W., subject to a mortgage for the sum of fifty-six hundred dollars and interest.

4. That the testator purchased said real estate of one S. R., and that it was conveyed to him by deed of said S. R., bearing date the second day of May, eighteen hundred and fifty-seven; that the consideration stated in said deed, and, as the plaintiff is informed and believes, the true consideration for the conveyance, was the sum of eighty-five hundred dollars; that after the description of the metes and bounds of the land in the said deed conveyed, the conveyance is declared to be subject to a mortgage of fifty-six hundred dollars and interest, and also subject to the taxes for 1857, said mortgage forming part of the consideration; that said mortgage is excepted from and taken out of the covenants of said deed, as by reference to a copy of said deed in Court to be produced will more fully appear.

5. That the mortgage referred to in said deed was given by said R. and one L. B. L. to J. V. K., to secure the promissory note of said L., for said sum of fifty-six hundred dollars.

6. That after the conveyance of said estate to the testator, the testator paid the interest upon said mortgage as it became due to the said J. V. K., the holder thereof; that the testator, as the plaintiff is informed and believes, was desirous of taking up the mortgage and substituting his own note therefor, and offered to the said J. V. K., the holder of the mortgage, so to do; but the said J. V. K. expressed a preference to let the matter remain as it then stood.

7. That the said S. B. and J. G. B. claim that said mortgage debt

¹ Andrews v. Bishop, 5 Allen, 490; Wheeler v. Perry, 18 N. H. 307; Deering v. Tucker, 55 Maine, 234; Kearney v. Macomb, 16 N. J. Eq. 189.

For form of decree in such case, see Wheeler v. Perry, 18 N. H. 307, 314.

is to be paid from the personal assets in the hands of the plaintiff, as executor.

8. That the said W. W. S. and others, residuary legatees, claim that the said real estate is devised to the plaintiff in trust for said S. B. and J. G. B., subject to the incumbrance of said mortgage, and that the plaintiff has no authority under said will to pay said mortgage debt.

9. And the plaintiff has no interest in the matter in controversy between the several defendants, but is advised that he cannot safely proceed in the matter without the direction and judgment of this Court sitting in Equity, having no adequate remedy at Law. Wherefore the plaintiff prays that the said several defendants may be decreed to interplead and state their several claims upon the plaintiff in the execution of his said trust as executor; so that the Court may adjudge whether a sufficient sum shall be taken from the assets of the estate in the hands of the plaintiff, to pay said mortgage debt and the interest thereon; or whether the same shall be paid to the defendants claiming under the residuary clause of said will.

* To the end, therefore, that the said defendants may answer * 2012: the premises, and that they may be decreed to interplead together; and that it may be ascertained by a decree of this honorable Court: whether said mortgage debt shall be paid by the plaintiff from the assets of the testator in the hands of the plaintiff as executor; and that the plaintiff may have other needed relief in the premises;

May it please your honors to issue your writ of *subpoena*, directed to the several defendants, commanding them, and every of them, at a day certain, to appear before your honors, and then and there to answer all and singular the premises, and to stand to and abide such order and decree therein, as to your honors shall seem meet.

W. T. A.

(*Jurat.*)

SECTION XX.

Bills for Payment of Legacies,¹ and also to carry the Trusts of Wills: into Execution.

64. Bill against an executor by the husband of a deceased legatee for payment of her legacy.

To, &c.

Humbly complaining, sheweth unto your honors the plaintiff A. B., of, &c., that W. S., late of, &c., duly made and published his last will and testament in writing, bearing date on or about —, and thereby, amongst other bequests, gave to his nephews and nieces, the children of his late sister M. A., the sum of \$ — each, to be paid to them as they should respectively attain the age of twenty-one years, and

¹ See Princeton v. Adams, Executor, 10 decree in such case, see Lupton v. Lupton, 2 Cess. 129; Gray v. Sherman, 5 Allen, 198; John. Ch. 629.
Brown v. Brown, 44 N. H. 281. For form of

appointed E. T. F., of, &c., the defendant hereinafter named, the sole executor of his said will, as in and by the said will, or the probate thereof, when produced will appear. And the plaintiff further showeth that the said E. T. F., soon after the death of the said testator, duly proved the said will in the appropriate Court, and hath since possessed himself of the personal estate and effects of the said testator to an amount much more than sufficient for the payment of his just debts, funeral and testamentary expenses and legacies. And the plaintiff further showeth that after the death of said testator, the plaintiff intermarried with A. A., who was the niece of the said testator, and one of the children of the said M. A., in the said will named, and by virtue of said intermarriage the plaintiff, in right of his said wife, be-

* 2013 came * entitled to demand and receive the aforesaid bequest of

\$ _____. And the plaintiff further showeth that the plaintiff's said wife lived to attain her age of twenty-one years, and that she hath lately departed this life, and that neither the plaintiff nor his said wife received any part of the said legacy. And the plaintiff further showeth, that, having obtained letters of administration to his said wife, he has repeatedly applied to the said E. T. F. for payment of the said legacy and interest thereon from the time of his said late wife's attaining her age of twenty-one years, and the plaintiff hoped that such, his reasonable requests, would have been complied with, as in justice and equity they ought to have done. BUT NOW SO IT IS, &c. To THE END, therefore, that, &c.

And that an account may be taken of what is due and owing to the plaintiff for the principal and interest of the said legacy, and that the said defendant may be decreed to pay the same the plaintiff, and if the said defendant shall not admit assets of the said testator sufficient to answer the same, then that an account may be taken of the estate and effects of the said testator, which have been possessed or received by the said defendant, or by any other person by his order or to his use, and that the same may be applied in due course of administration. [And for further relief.] May it please your honors, &c.

65. *Bill on behalf of infant legatees entitled to a sum of stock standing in the names of the executors, praying to have a guardian appointed, maintenance allowed for the time past and to come, an account taken of the dividends retained by the executors, and to have the stock transferred into the Accountant-General's name.*

Humbly complaining, show unto your honors the plaintiffs E. H., J. H., T. H., and M. A. H., infants under the age of twenty-one years, by J. E., of, &c., their next friend, that E. H., the elder, late of, &c., but now deceased, duly made and published his last will and testament in writing, bearing date, &c., whereby he directed that W. T., of, &c., and E. B., of, &c., the defendants hereinafter named, and C. G., of, &c., who were the trustees and executors in his said will named, should, out of the moneys which should come to their hands in manner therein

mentioned, lay out and invest in or upon government or real securities at interest the sum of \$ — upon trust, &c. [The trustees were to pay the dividends to E. H., the testator's wife, during her life or until her second marriage, and after her decease or second marriage, the whole of the dividends to be applied by the trustees for the maintenance and education of testator's grandchildren, the plaintiffs, to whom the principal was to be transferred, to the grandsons at twenty-one, and to the granddaughters at twenty-one or marriage], as in and by, &c. And * the * 2014 plaintiffs further show that the said testator departed this life in or about the month of —, without having in any manner revoked or altered the said will, except by a codicil bearing date, &c., which did not relate to or affect the said trusts of the said sum of \$ —. And the plaintiffs further show unto your honors that W. T. and E. B. and the said C. G. duly proved the said testator's will, and acted in the trusts thereof, and out of the moneys which came to their hands from the estate and effects of the said testator, in or about, &c., appropriated the sum of £ —, in satisfaction of the aforesaid legacy in the purchase of the sum of £ — three per cent consolidated bank annuities, and the said sum of stock is now standing in their names in the books of the Governor and Company of the Bank of England. And the plaintiffs further show that the said C. G. has departed this life, and that the said E. H., on or about, &c., intermarried with and is now the wife of the said J. E., whereupon the interest of the said E. H., in the said sum of £ — three per cent consolidated bank annuities wholly ceased. And the plaintiffs further show that the said defendants paid to the said J. E. and E., his wife, the year's dividends which became due on the said sum of stock on the — day of —, as well for the interest of the said E. E. in the said stock as for the maintenance and education of the plaintiffs up to that time; but the said defendants have retained in their hands the subsequent dividends which accrued due on the said stock, and have made no payments or allowances thereout for the maintenance or education of the plaintiffs. And the plaintiffs further show that some proper person or persons ought to be appointed as the guardian or guardians of the plaintiffs, with suitable allowances for their maintenance and education for the time past since the said — day of —, and for the time to come, and that the said sum of stock ought to be secured in this honorable Court. To THE END, therefore, &c.

And that the said defendants may answer the premises, and that some proper person or persons may be appointed the guardian or guardians of the plaintiffs, with suitable allowances for their maintenance and education for the time past since the said — day of —, and for the time to come, and that the said defendants may account for the dividends of the said trust stock which have accrued due since the said — day of —, and may thereout pay the allowances which shall be made for the maintenance and education of the plaintiffs since the said — day of —, and may pay the residue thereof into this honorable Court for the benefit of the plaintiffs; and may also transfer the said sum of £ — three per cent consolidated bank annuities into the

name of the Accountant-General of this honorable Court, to be there secured for the benefit of the plaintiffs, and such other persons as may eventually be interested therein. [And for further relief.] May it please, &c.

* 2015 * 66. *Bill by the widow of a testator against the executors and trustees, claiming a share of the profits of a special partnership as a part of her annual income under the will.*

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, ss.

To the Honorable, the Justices of the Supreme Judicial Court, sitting in Equity.

Humbly complaining, showeth unto your honors the plaintiff, A. M. K., of B., in the county of S., widow of D. M. K., late of N., in the county of M., merchant; — that the said D. M. K. departed this life on the twenty-second day of February, A. D. 1860, leaving a last will and testament, which, on the twenty-eighth day of March, A. D. 1860, was duly proved and allowed by the Court of Probate for the county of M.; that in and by said last will he nominated and appointed as executors and trustees under the same, W. B. of B., in the county of S., J. B. L., also of said B., and G. G., of N., aforesaid; that the said J. B. L. declined to accept the said trust of executor or trustee, and letters testamentary were duly issued to the said W. B. and G. G., who accepted the said trust, and undertook and entered upon the execution of the same.

And the plaintiff further shows, that the said D. M. K., by his last will and testament, after certain specific charges and legacies therein set forth, devised and bequeathed the rest and residue of his estate in the terms and manner following, to wit: [*state the provisions of the will on which the question in dispute arises.*]]

And the plaintiff further shows, that the two children of the said D. M. K. in said will mentioned, to wit; A. Moncrief K. and D. Malcom K., are minors, now residing in N. aforesaid, and that the plaintiff is their legal guardian.

And the plaintiff further shows, that, on or about the fourth day of September, A. D. 1858, the said D. M. K. became a special partner for the term of four years in the business of buying and selling dry goods with J. H., G. R. B., and J. T., merchants and copartners in B., aforesaid, under the name and firm of H., B., & T.; and the said D. M. K. contributed to the capital stock of said firm the sum of fifty thousand dollars, and by himself or his legal representative became entitled to receive a moiety of the net profits of the said partnership business; as by the written contract of partnership between the said H., B., & T. of the first part, and the said D. M. K. of the second part, bearing date the fourth day of September, A. D. 1858, and here in Court to be produced, and to which, for greater certainty, the plaintiff craves leave to refer, more fully appears. And the plaintiff avers, that said partner-

ship still continues in full force, and that the said executors and trustees have received therefrom, as the share of the net profits belonging * to the estate of the said D. M. K., a very large sum * 2016 of money, to wit, forty thousand dollars.

And the plaintiff had well hoped that the said W. B. and G. G., executors and trustees, as aforesaid, would, upon the receipt from the said firm of H., B., & T. of a moiety of the net profits of their business, so as aforesaid to be paid to the said D. M. K. or his legal representative, pay over to the plaintiff the portion of the same, by the provisions of the will of the said D. M. K. directed to be paid over to her.

But now, so it is, that the said W. B. and G. G., though requested, do utterly refuse to pay over to the plaintiff any portion of the income derived by them from the said partnership business ; but, on the contrary, do claim and pretend that the profits accruing to them as executors and trustees, by virtue of the interest of D. M. K. and his legal representatives in said partnership business, do belong to, &c., under the provisions of said will, are to be added to the principal fund of the residue of the estate of the said D. M. K., and are not to be added to, and do not form a part of, the income of said residue.

The contrary of all which the plaintiff charges to be true, and expressly claims and avers, that, under the provisions of the said will, the share of the net profits of said partnership business, belonging and accruing to the estate of said D. M. K., forms a portion of the income of the residue of said estate, and is to be added to all the other income arising from the residue of said estate, and that the whole amount thus made up constitutes the fund, of which, under the provisions of said will, after deducting charges and expenses, the plaintiff is annually entitled to receive one-third part, diminished only by the sum of seven hundred and fifty dollars, as directed in said will.

In consideration whereof, and because the plaintiff is entirely reme-
less in the premises according to the strict rules of the Common Law,
and can only have relief in a Court of Equity, where matters of this
nature are properly cognizable and relievable.

To the end, therefore, that the said defendants W. B. and G. G. and the said minor children, A. Moncrief K. and D. Malcom K., by a guardian for this suit, which the plaintiff prays the honorable Court to appoint, may, upon their several and respective corporal oaths, full, true, direct, and perfect answer make to all and singular the premises, as fully in every respect as if the same were here repeated, and they thereunto particularly interrogated, according to the best of their respective knowl-
edge, information, and belief ; and that it may be determined by the judgment of this honorable Court whether, under the will of the said D. M. K. the share of the net profits of the business of the firm of H., B., & T. belonging to the estate of the said D. M. K. is and is to be taken as a part of the income, or as part of the principal fund of the residue of the estate of the said D. M. K. ; and that, if it shall appear that such share of the profits of the said partnership * business * 2017 constitutes and forms a part of the income of said residue, the

aforesaid defendants, W. B. and G. G., executors and trustees under said will, and their successors in said trust, may be ordered and decreed to account with the plaintiff for the profits of said partnership business, and pay over to the plaintiff such a proportion thereof as she is entitled to, under the provisions of the will of the said D. M. K.; and that the plaintiff may have such other and further relief as the nature of her case may require, and to your honors may seem meet.

May it please your honors to grant unto the plaintiff a writ of *sub-pœna*, to be directed to the said W. B., G. G., A. Moncrief K. and D. Malcom K., thereby commanding them, and every of them, at a certain day and under a certain penalty therein to be specified, personally to appear before your honors in this honorable Court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet, and the plaintiff will ever pray.

A. M. K.

SECTION XXI.

Bills relating to Trusts.

67. *Bill by an executor and trustee under a will, to carry the trusts thereof into execution.*

To, &c.

Humbly complaining, shows unto your honors the plaintiff C. R., of, &c., executor of the will and codicils of M. S., late of, &c., deceased, and also a trustee, devisee, and legatee named in said will and codicils, against J. G., of, &c., &c., and E. his wife, and B. S., of, &c., &c., and J. S. G., of, &c., &c., that the said M. S. at the several times of making her will and codicils hereinafter mentioned, and at the time of her death was seised or entitled in fee-simple of or to divers messuages, lands, &c., of considerable yearly value, in the several counties of C. and D., and being so seised or entitled, and also possessed of considerable personal estate, the said M. S., on or about —, made her last will and testament in writing, and which was duly signed and attested, and published by her, according to law, and thereby, after giving divers pecuniary and specific legacies and divers annuities, the said testatrix gave and devised unto the plaintiff all, &c. [*stating the substance of the will*]. And the said testatrix afterwards, on or about —, made a codicil to her said will, which was duly signed, attested, and published, according to law, and thereby gave, &c., and in all other respects she

thereby confirmed her said will and all other codicils by her
* 2018 theretofore * made; as by said will and the said several codicils thereto or the probate thereof, to which the plaintiff craves leave

to refer, when produced, will appear. And the plaintiff further shows that the said testatrix M. S. departed this life on or about —, without having revoked or altered her said will and codicils, save as such will is revoked or altered by the said codicils, and as some of the said codicils have been revoked or altered by some or one of such subsequent codi-

cils; and the said testatrix at her death left the said E. G., formerly E. S., and the said B. S. her cousins and coheiresses-at-law. And the plaintiff being by the said codicil of the — day of —, appointed sole executor of the said will and codicils, has since her death, duly proved the said will and codicils in the proper Court, and taken upon himself the execution thereof. And the plaintiff further shows that the said testatrix, at the time of her death, was possessed of, interested in, and entitled unto considerable personal estate and effects, and amongst other things, she was entitled to an eighth share and interest in a certain copartnership trade or business of a tin-blower and tin-melter, which was carried on by the testatrix and certain other persons, at —, under the firm of S. F. & Co., in which the testatrix had some share of the capital, and which was a profitable business, and by the articles of copartnership under which the said business was carried on, the plaintiff, as the said testatrix's personal representative, is now entitled to be concerned in such share of the said business for the benefit of the said testatrix's estate; and she was also possessed of or entitled to certain leasehold estates held by her for the remainder of certain long terms, &c. And the plaintiff further shows that he has possessed himself of some parts of the testatrix's personal estate, and has discharged her funeral expenses, and some of her debts and legacies, and the plaintiff has also, so far as he has been able, entered into possession of the said testatrix's estates, which she was seised of, or entitled to, at the times when she made her said will and codicils, and which consisted of, &c., being all together of the yearly value of \$ —, or thereabouts, besides the said mansion-house, and besides the premises, which, by the said codicil, dated on — day of —, are devised to the plaintiff for his own use and benefit; and the plaintiff is desirous of applying the said testatrix's personal estate and effects, not specifically bequeathed, in payment of the said testatrix's debts, and of her legacies now remaining unpaid, and of the annuities bequeathed by the said will and codicils, so far as the same will extend, and of paying the remainder thereof out of the rents and profits of the said real estates, and of applying the whole of the rents and profits, according to the directions of the said will and codicils, as in justice and equity ought to be the case. But now so it is, may it please your honors, that the said J. G., and E. his wife, B. S., and J. S. G., in concert with each other, make various objections to the plaintiff's applying the said * personal estate, * 2019 and the rents and profits of the said real estate, according to the directions of the said will and codicil; and the said defendants J. G. and E. his wife sometimes pretend, that by virtue of the said testatrix's will, they are entitled to the residue of the said testatrix's personal estate, not specifically bequeathed, including all her household estates, after payment of all her funeral expenses and debts, and that the said personal estate is not subject to the payment of the several legacies and annuities given by the testatrix's said will and codicils, but is exempt therefrom, and that all the said legacies and annuities ought to be paid out of the rents and profits of the said testatrix's real estates. Whereas the plaintiff charges the contrary of such pretences to be true, and that

the said personal estate is applicable to the payment of all the said testatrix's legacies and annuities, after satisfying all her funeral expenses and debts; and the said J. G. and E. his wife are desirous that the plaintiff, as the personal representative of the said testatrix, should, by means of the said testatrix's share of the capital employed in the said trade or business, carry on the said trade or business for the benefit of them and of the said testatrix's estate, but which the plaintiff cannot safely do without the direction and indemnity of this Court; and the said J. G. alleges that he is not of ability to maintain and educate his said son J. S. G., who is an infant of the age of ten years or thereabouts, and he therefore claims to have some part of the rents and profits of the said premises paid to him, for the maintenance and education of the said J. S. G.; and the plaintiff, under the circumstances aforesaid, is unable to administer the said personal estate, and to execute the trusts of the said real estates, without the directions of this honorable Court, and the defendants are desirous of having a person appointed by this Court to receive the rents and profits of the said real estates devised as aforesaid by the said fifth codicil, to which the plaintiff has no objection. In consideration whereof, &c. To THE END, therefore, &c.

And that the trusts of said will and codicil may be performed and carried into execution by and under the direction of this Court, and that an account may be taken of the said testatrix's personal estate and effects, not specifically bequeathed, and of her funeral expenses and debts, and of the legacies and annuities bequeathed by the said will and codicils, the plaintiff being ready and hereby offering to account for all such parts of the said personal estate as have been possessed by him, and that the said personal estate may be applied in payment of the said funeral expenses, debts, and legacies and annuities in a due course of administration, and that the clear residue, if any, of the said personal estate may be ascertained and paid to the said defendants J. G. and E. his wife, in her right; and in case it shall appear that the said personal estate, not specifically bequeathed, is not sufficient for

* 2020 * payment of all the said funeral expenses, debts, legacies, and annuities, or that any parts thereof are not payable out of such

personal estate, then that proper directions may be given for payment of such deficiency, or of such parts thereof as are not payable out of the said personal estate, according to the trusts of the said term of one hundred years, vested in the plaintiff as aforesaid and that an account may be taken of the rents and profits of the said real estates, comprised in the said term received by or come to the hands of the plaintiff, and that the same may be applied according to the trusts of the said term; and that proper directions may be given touching the effects specifically bequeathed by the said will and codicils as heirlooms, and that proper inventories may be made thereof; and that all necessary directions may be given touching the application of a sufficient part of the rents and profits of the said real estates to the maintenance and education of the said J. G. S., in case this Court shall be of opinion that any allowance ought to be made for that pur-

pose; and that a proper person may be appointed by this honorable Court to receive the rents and profits of the said real estates devised as aforesaid by the said fifth codicil. [And for further relief.] May it please, &c.

Pray subpoena against J. G. and E. his wife, B. S., and J. S. G.

68. *Prayer in a bill against executors and residuary legatees, the latter having raised a question of satisfaction. [Modern English Form.]*

1. That it may be declared that the aforesaid advance and settlements of the sum of £—— bank £3 per cent annuities, made on the marriage of the said M. C. with the said J. D. W., was not an ademption or satisfaction of the legacy of £30,000 like annuities given by the said will of the said testator in favor of the said M. C. and her issue, or of the residuary bequest also made by the said will in favor of the said M. C. and her issue.

2. That it may be declared, that the plaintiffs are entitled to have a sum of £30,000 bank £3 per cent annuities set apart out of the personal estate of the said testator to answer the bequest contained in the said will of £30,000 bank £3 per cent annuities in favor of the said M. C. and her issue, and that the said executors may be directed to set apart and transfer the same accordingly.

3. That it may also be declared, that the plaintiffs are entitled to have one equal eighth part of the residuary personal estate of the said testator set apart and duly invested upon and for the same trusts, interests, and purposes as are expressed by the said will of and concerning the last-mentioned sum of £30,000, &c.

4. That proper accounts and inquiries may, if necessary, be directed for the purpose of ascertaining the clear residue of the personal estate of the said testator, and the one equal eighth part thereof may be set apart and invested accordingly.

5. [For further relief.]

* 69. *Bill to obtain reimbursement out of an estate, to the children * 2021 of a testator who had by his will directed certain portions of said estate to be sold for the payment of debts and legacies, but which debts and legacies had, in whole or in part, been paid out of the income of the estate, which income had been devised to said children.¹*

F. A., of B., in the county of S., gentleman, G. W. A., of E., in the State of I., gentleman, C. G. L., of said B., Esquire, and Cornelia, his wife, bring this their bill of complaint against J. A. L., of said B., Esquire, as he is executor of and trustee under the will of F. A., late of M., in the county of N., gentleman, deceased.

And thereupon the plaintiffs allege that the said F. A., late of M. aforesaid, departed this life, testate, having made a will and three codicils, copies of which are filed herewith, and which were duly admitted to probate in said county of N., in and whereby, besides divers other

¹ Amory v. Lowell, 1 Allen, 504.

provisions, he gave and devised all the rest and residue of his estates to the said J. A. L., and to H. C., G. A. G., and his son, the said F. A., in trust for the benefit of his children, the plaintiffs, the said F. A., G. W. A., and Cornelia, during their respective lives, to collect and receive the income thereof, and after deducting expenses, to divide the surplus equally between them, and upon the death of any of them to pay his or her share thereof during the life of the survivors and survivor, in such manner as the *cestui que trust* so dying should direct by will, and in default thereof as the plaintiffs understand and are advised, to the children of such *cestui que trust*, and in default thereof, to the survivors and survivor. And upon the further trust upon the decease of the last survivor to divide and distribute the trust estates in equal shares to and among all the children of the plaintiffs, share and share alike; provided, always, that if the said *cestui que trusts*, or any of them, should have disposed of his or her interest in the reversion of the estates by will, such disposal should be observed and followed.

The plaintiffs further show, that the said H. C., F. A., and G. A. G. declined the said trust, and that the said J. A. L. accepted, and has since administered the same.

The plaintiffs further show that the said testator appointed the said J. A. L., H. C., F. A., and G. A. G. to be the executors of his said will, and that all of them except the said J. A. L. declined the trust, and that he accepted the same, and was duly appointed and qualified and has administered the said estate.

The plaintiffs further show, that at the time of his decease the said testator was possessed of divers real and personal estates of great value and was indebted to divers persons in large sums of money, and

* 2022 that * in and by his said will he directed that all his just debts should be first paid, and afterwards directed the said executors, their survivors or any administrator to sell and convey a certain parcel of land, situate at the corner of H. and C. Street in said B., and another parcel situate in M. Place, near W. Street, and to apply the proceeds to the payment of his debts; and if the amount derived therefrom should not be sufficient to pay the same, then for the same purpose to sell any other real estate situate in said B. of which he should die seised.

The plaintiffs, the said F. A. and G. W. A. and the said Cornelia, further show that the personal estate of which the said testator was possessed was small in value and wholly insufficient to pay his debts and legacies, and that his real estate by reason thereof, as well as by the contents of his said will, became charged with the payment thereof, — and in the usual course of administration, as well as by the express directions of the testator, should have been sold and the proceeds applied in payment thereof, and the residue held in trust during the lives of the plaintiffs, the said F. A., G. W. A., and Cornelia, and their survivors.

That at the testator's decease his debts amounted to about sixty thousand dollars, and the legacies bequeathed to seventeen thousand dollars; and that the appraised value of the estates directed to be first sold in order to obtain the means for payment thereof was, as appears by the

appraisement, in the aggregate, the sum of seventy-eight thousand dollars.

The said plaintiffs further allege, that the said J. A. L., the sole acting executor and trustee, was nearly related to them, and that they had unlimited confidence in his friendship, integrity, and financial ability and discretion, and that he, as their official adviser and friend, advising with them upon the best course to be taken for their own immediate and future interests, and for the protection of the interests of those who should be entitled to the estates of the testator after their decease, was of opinion that the same could be leased to advantage, and might be expected to increase much in value; and that it would conduce to their interest and that of their children, that the same should not be sold at that time, but be leased, and that a portion of the income should be applied to the payment of the principal and interest of the debts due and chargeable upon the said estates, as well as by express liens or mortgages existing thereon as by the operation of law and the will of the testator.

That the said plaintiffs, relying upon the said representations, consented thereto, and that the said J. A. L. thereupon and since has leased the said estates, and has received the income thereof, and has applied the same to the payment of the said debts and the interest thereon, until the same are quite or nearly paid and satisfied, and has also paid a part thereof to the plaintiffs.

* That the representations and expectations of the said J. A. L. * 2023 and the said plaintiffs have been more than realized, and that the said real estates have increased in value by a much larger degree than was anticipated, whereby the interest of those who will be entitled to the same in remainder have been very largely promoted.

That the consent of the plaintiffs to such appropriation of the income was not given for any definite time, nor was any agreement made or stipulation entered into on either side, to deprive them of their rights to have recourse to the said estates for repayment of the sums so appropriated, whenever the said estates could be sold to advantage, and that by reason of the appropriation of the said income to the payment of the debts of the said estate, they have become subrogated to the rights of the original creditors, and are entitled to have the real estates directed by the said testator to be disposed of for that purpose now sold and the proceeds applied in payment of the sums so advanced and paid out of the income to which they were entitled as equitable tenants for life, or to have such reimbursements out of the proceeds of others of the estates of the testator, which may be more advantageously disposed of.

That the said estates which the testator directed to be sold for the payment of his debts, so much thereof as is necessary for that purpose, and certain other of the estates of which he died seised, can now be sold to great advantage and for very large prices, compared to their value at the time of the decease of the testator, and that the same ought now to be sold, and the proceeds applied to the payment of any debts not already paid and satisfied, and to the payment of the sums due to them respectively, on account of the appropriation of their income to the payment

of debts, the amount of which the plaintiffs are unable to set forth of their own knowledge.

That the plaintiffs have requested the said J. A. L. to cease from appropriating the income of the said real estates to the payment of the debts and legacies of the testator, and to pay it to them; and also to sell the said estates directed to be sold for the payment of debts, or so much thereof as may be necessary, and to apply the proceeds to the payment of the debts and legacies remaining unpaid, and to the payment to the plaintiffs of the sums due to them as aforesaid with interest, and to render an account of all his receipts, payments, and doings, to the end that it may appear what sums of money belonging to the plaintiffs have been heretofore applied in payment of the said debts and legacies.

And the plaintiffs well hoped that the said J. A. L. would comply with such reasonable request.

But now so it is, may it please your honors, that the said J. A. L., though admitting the equitable rights of the plaintiffs, and that they are justly entitled to be reimbursed for so much of their income as

* 2024 * has been applied to the payment of the said debt sand legacies, objects that he cannot now proceed to sell the said real estate, and to apply the proceeds without the direction of this most honorable Court, and the protection which a decree thereof would give to him; and sometimes that the power to sell was given to four executors, of whom only one accepted the trust, and that it is doubtful whether he has the power to sell and convey a good title; and sometimes that as trustee he is merely a tenant for life during the lives of the said F. A., G. W. A., and Cornelia, and their survivors, without power to sell and convey a fee; and that if he should undertake so to do, there would be difficulty and embarrassments in making a title, by which the value of the said estate would be depreciated, unless a sale thereof was made under a decree of some competent Court.

And the plaintiffs, insisting that their rights in the premises are clear and indisputable, admit that the said J. A. L. may reasonably claim the benefit and protection of a decree in the premises before proceeding to sell the said estates; and insisting that his right to sell as executor is indisputable, inasmuch as the power, though given to four, was directed to be exercised by their survivor or whoever should administer the estate, and also that he is duly empowered to sell as trustee, because by virtue of the duties imposed upon him as trustee he necessarily holds an estate in fee, yet admit that it would be for the interest of all concerned, and might prevent embarrassment and loss, if the said estates were sold under the order and direction of this honorable Court.

To the end, therefore, that the said J. A. L. may be ordered to render an account of all the real and personal estates received and administered by him, and of the application thereof, and of the sums of money received from the rents of said real estate and from other sources, and of the expenditure thereof, and of how much of the income thereof belonging to the plaintiffs has been applied to the payment of debts and legacies, and that he may set forth and discover what estates are now held by him as executor or trustee, and generally may make answer in the premises,

and may especially set forth what was the value of the several parcels of real estate owned by the said testator at the time of his decease, and at what prices the same could now be sold, and whether any permanent improvements have been made thereon, and if so, of what nature, and to what extent and cost; and that he may be ordered to sell the said estates directed to be sold by the testator or such other estates as may to the Court seem desirable, or so much thereof as may be necessary to pay all debts and legacies remaining unpaid, together with such sums of money with interest as may be justly due to the plaintiffs for so much of the income belonging to them as has been applied to the payment of debts and legacies, or expended for permanent improvements, and he may set forth and discover *whether the plaintiffs, or any or * 2025 either of them, ever agreed or consented that all of the said debts and legacies should be paid out of the said rents, without their being substituted in the place of the creditors, or to waive their rights to require the said estates to be sold whenever deemed expedient; and that the plaintiffs may have such further and other relief in the premises as the nature of the case may require; and that such order and decree may be passed as will give adequate protection to the said J. A. L., and insure a good title to any purchaser.

May it please your honors, &c. [Pray subpoena.]

F. C. L., Solicitor for Plaintiffs.

70. *Bill by administrator to have certain testamentary papers declared void for want of due execution and authentication, and to obtain the property of the deceased from the person in whose custody it was left for disposition according to said testamentary papers.¹*

To the Judges of the Circuit Court of the United States within and for the District of Massachusetts, sitting in Equity.

T. C. G., a subject of her Britannic Majesty, and now her Britannic Majesty's consul at the port of B., as administrator of the goods and estate of the late Sir J. C., Baronet, intestate, brings this his bill against W. A., of the city of B., and district aforesaid, merchant, and Jacob H. H., of L., in the said district, and his wife, Julia H. H., of the said L., all of the said defendants being citizens of the Commonwealth of Massachusetts. And thereupon your orator complains and says, that Sir J. C. died at the city of B. on or about the eighth day of October, A. D. 1842, and that your orator on the twenty-second day of April, A. D. 1844, was duly appointed administrator of the estate of the said Sir J. C., within the Commonwealth aforesaid, and has given bonds according to law for the faithful performance of his duties as such. That on or about the twenty-first day of April, A. D. 1841, the said Sir J. C. assigned to the said W. A. twenty shares in the Nashua Manufacturing Company, and at the same time received from the said W. A. seven thousand dollars as an advance on account of the said shares. That on

¹ *Grattan v. Appleton, 3 Story, 755.*

or about the same time the said Sir J. C. addressed to the said W. A. a letter of instructions with regard to the said shares, which was duly received by the said W. A., in the following words: [Recite contents of letter.]

That on or about the fourteenth day of January, A. D. 1842, the said Sir J. C. addressed to the said W. A. a letter which was duly received by the said W. A., in the following words: [Recite contents of letter.]

That the said letter enclosed the two following letters: [Recite contents of letters.]

That the last letter was sealed and indorsed as follows: "W.
* 2026 A., * Esq., is requested to take charge of this packet in his safe
until he either sees or hears from Sir J. C., or receives authentic
intelligence of his death, when Sir J. C. begs he will be so good as to
open it and comply with the request therein contained. Boston, 14th
February, 1842."

That at some time after the death of the said Sir J. C., the said W. A. opened the said letter and the several enclosures therein. And your orator further says, that the several sums of money, amounting in all to a large sum, to wit, three thousand dollars, which the said W. A. had in his possession at the time of the death of the said Sir J. C. and belonging to the said Sir J. C., rightly belong to your orator as administrator of his estate, and that the said W. A. is justly bound to pay the same to your orator, with interest thereon for their detention. And your orator well hoped that the said W. A. would pay the same, but the said W. A. pretends that he cannot with safety pay the same, on account of certain pretended claims made in pursuance of the letters hereinbefore recited by the said Jacob H. H. and his said wife, and also by one E. J., of Bologne, near London, in the Kingdom of Great Britain and Ireland, spinster, a person out of the jurisdiction of the Court, and on this account alone not a party to this bill, and under this pretence, though often requested, the said W. A. refuses to pay the same.

To the end, therefore, that the said W. A., Jacob H. H., and Julia H. H., and also E. J., if she shall come within the jurisdiction of the Court, may respectively full and perfect answer make upon their respective corporal oaths, according to their respective knowledge, information, and belief, to all and singular the matters and charges aforesaid, and that as fully as if the same were here repeated, and they hereto particularly interrogated. And that the said W. A. may set forth an account of all and every sum and sums of money, or of any personal estate received by him, or by any person by his order, from the said Sir J. C., and how the same have respectively been applied or disposed of, and whether any and what part of the same now remains unapplied or undisposed of, and that, upon a full and fair disclosure of the several matters aforesaid, the said W. A. may be decreed to pay to your orator the said sum of three thousand dollars with interest thereon, for the unjust detention thereof, that the said pretended claims of the said Jacob H. H. and wife, and of the said E. J., may be decreed to be without force and virtue; and that your orator may have such further relief in the premises as the nature of the case may require, and as may be

agreeable to equity and good conscience. May it please your honors,
&c.

T. C. G.

[*Pray subpoena against W. A., J. H. H. and wife, and E. J., "if she shall come within the jurisdiction of the Court."]*]

G. S. H., *Solicitor.*

* SECTION XXII.

* 2027

Bills for Partition.¹

71. *Bill by coheiresses and their husbands for a partition of freehold estates.*

To, &c.

Humbly complaining, show unto your honors the plaintiffs, T. K., of, &c., and C. his wife, L. G., of —, and M. his wife, and J. V., of, &c., widow, that W. S., of, &c., deceased, the late father of the plaintiffs, C. K., M. G., and J. V., and also E. F., wife of R. F., of, &c., the defendants hereinafter named, was in his lifetime, and at the time of his death, seised in fee-simple or of some other good estate of inheritance to him and his heirs, of and in all that messuage or dwelling-house, &c., and also of and in all that other messuage, &c.; all which said messuages, lands, and premises are situate, lying, and being in, &c., and being so seised, he, the said W. S., did many years since depart this life, intestate, leaving M. S., his wife, and the said C. K., M. G., and J. V., and their sister E. F., his four daughters and only children, and coheiresses him surviving; and upon his death the said messuages, &c., and premises descended upon and came to the said C. K., M. G., and J. V., and the said E. F., as such coheiresses, subject only to the dower of their said mother, M. S. And the plaintiffs further show unto your honors, that the said M. S., the widow and relict of the said W. S., departed this life some time in or about the month of —, whereupon the plaintiffs, T. K. and C. his wife, and L. G. and M. his wife, in right of the said C. and M. and also said J. V., and the said R. F. and E. his wife, in right of the said E., have ever since been, and now are, severally seised in fee of and in the said messuages, &c., and premises in four equal undivided parts or shares as tenants in coparcenary. And the plaintiffs further show, that they have frequently applied unto and requested the said R. F. and E. his wife to join and concur with the

¹ A petition for partition is in the nature of a bill in Equity. *Nesmith v. Dinsmore*, 17 N. H. 515. The U. S. Circuit Courts, sitting as Courts of Equity, have jurisdiction to partition land. *Daniels v. Benedict*, 50 Fed. Rep. 347. A reversioner or remainder-man cannot compel partition during the continuance of the particular estate. *Merritt v. Hughes*, 36 W. Va. 256. The owner of an equitable title may maintain a suit for partition. *Watson v. Sutro*, 86 Cal. 500. Upon partition, tenants in

common take their shares by descent, and not by purchase. *Harrison v. Ray*, 108 N. C. 215. In Equity, as at Law, a pending lease for years is not an obstacle to partition between the owners of the fee. *Willard v. Willard*, 145 U. S. 116. A bill in Equity cannot be maintained in Massachusetts by a tenant in common against his co-tenants for partition of a house and land. *Whiting v. Whiting*, 15 Gray, 503; *Hodges v. Pingree*, 10 Gray, 14; see *ante*, p. 1150.

plaintiffs in making a fair, just, and equal partition of the said premises between them, in order that their respective shares and proportions thereof may be allotted, held, and enjoyed in severalty. And the plaintiffs well hoped that the said R. F. and E. his wife would have complied with such their reasonable requests, as in justice and equity they ought to have done. But now so it is, &c., &c., they, the said defendants, absolutely refuse to comply with such the plaintiffs' reasonable requests as aforesaid, pretending that the plaintiffs and the

* 2028 said * defendants have ever since the death of the said W. S. and M. S. respectively, their said father and mother, deceased, constantly and regularly divided the yearly rents and profits of all the said messuages, &c., and premises equally between them, and that it will not be to the benefit or advantage of either of them to make an actual partition thereof. Whereas the plaintiffs charge, and so the truth is, that a fair, just, and equal partition of the said premises will tend greatly to the benefit and advantage of the plaintiffs and the said defendants, but they, the said defendants, under divers frivolous pretences, absolutely refuse to join or concur with the plaintiffs therein. All which actings, &c.

And that a commission of partition may be issued out of and under the seal of this honorable Court, and directed to certain commissioners therein named, to divide and allot the said messuages, &c., and premises in equal fourth parts or shares; and that one full and equal fourth part or share may be allotted and conveyed unto the plaintiff T. K. and C. his wife, and the heirs and assigns of the plaintiff C. K.; that one other full and equal fourth part or share may be allotted and conveyed unto the plaintiff L. G. and M. his wife, and the heirs and assigns of the plaintiff M. G.; and that one other full and equal fourth part or share may be allotted and conveyed unto the plaintiff J. V., her heirs and assigns; and that the plaintiffs T. K. and C. his wife, L. G. and M. his wife, and J. V., may severally hold and enjoy their respective allotments of the said premises according to the natures thereof in severalty; and that all proper and necessary conveyances and assurances may be executed for carrying such partition into effect, &c. May it please, &c.

SECTION XXIII.

Bills for the Appointment of New Trustees.¹

72. *Bill to remove trustees, one refusing to act and the other a prisoner for debt, having applied part of the trust moneys to his own use. Prayer for an account, and for an injunction to restrain them from any further interference, — also for a reference to a Master to appoint new trustees, and for a Receiver.*

Humbly complaining, show unto your honors the plaintiffs, J. E., of, &c., and S. his wife, and S. E. the younger, spinster, the daughter and only

¹ See Abbott, Adm'r, Pet. 55 Maine, 580.

child of said J. E. and S. his wife, that by indenture bearing date —, and made between said J. E. and S. his wife of the one * part, * 2029 and N. B., of, &c., and R. P., late of, &c., but now a prisoner in the jail of —, the defendants hereinafter named, of the other part, after reciting that, &c. [*stating the indenture*], as by the said will to which your orator and oratrixes crave leave to refer when produced will appear. And the plaintiffs further show unto your honors, that the said R. P. has principally acted in the trusts of the said indenture, and has, by virtue thereof, from time to time received considerable sums of money and other effects, but the said R. P. has applied only a small part thereof upon the trusts of the said indenture, and has applied and converted the residue thereof to his own use, and in particular the said R. P. has within a few months past received a considerable sum from the estate and effects of the said C. E., the whole of which he has applied to his own use. And the plaintiffs further show that they have by themselves and their agents repeatedly applied to the said R. P. and N. B. for an account of the trust property received and possessed by them, and of their application thereof. And the plaintiffs well hoped that the said defendants would have complied with such their reasonable requests, as in justice and equity they ought to have done. But now so IT IS, &c. And the said defendants pretend that the trust property and effects possessed and received by them were to an inconsiderable amount, and that they have duly applied the same upon the trusts of the aforesaid indenture. Whereas the plaintiffs charge the contrary of such pretences to be the truth, and that so it would appear if the said defendants would set forth, as they ought to do, a full and true account of all and every the said trust property and effects which they have respectively possessed and received, and of their application thereof. And the plaintiffs charge that the said R. P. threatens and intends to use other parts of the said trust property, and to apply the same to his own use, unless he is restrained therefrom by the injunction of this honorable Court. And the plaintiffs further charge that he, as well as the said N. B., ought to be removed from being trustees under the said indenture, and that some other persons ought to be appointed by this honorable Court as such trustees in their place and stead, and that in the mean time some proper person ought to be appointed to receive and collect the said trust property. All which actings, &c.

And that the said defendants may answer the premises, and that an account may be taken of all and every the said trust property and effects which have, or but for the wilful default or neglect of the said defendants might have been received by them or either of them, or by any other person or persons by their or either of their order, or to their or either of their use; and also on account of their application thereof; and that the said defendants may respectively be decreed to pay what shall appear to be due from them on such account; and that the said defendants may be removed from being trustees under the said indenture, * and that it may be referred to one of the Masters * 2030 of this honorable Court to appoint two other persons to be the

trustees under the said indenture in their place and stead, and that in the mean time some proper person may be appointed to receive and collect the said trust estate and effects, and that the said defendants may be restrained by the order and injunction of this honorable Court from any further interference therein. [And for further relief.] May it please, &c.

73. Bill for the appointment of a new trustee under a marriage settlement, in the room of one desirous to be discharged, there being no such power therein contained.¹

Humbly complaining, show unto your honors the plaintiffs, J. M. P., of, &c., and E. his wife, and A. P. and C. P., infants under the age of twenty-one years, by the said J. M. P., their father and next friend, and S. N. M., of, &c. [*the other trustees under the settlement*], that by certain indentures of lease and release bearing date respectively, &c., the release being of three parts, and made or expressed to be made between, &c. [*stating the indenture of release*]. But the said indenture of release contained no power or authority to appoint a new trustee in the place or stead of either of the said trustees therein named, who should decline to act in the said trusts, or be desirous to be removed therefrom; as in and by the said indentures, &c. And the plaintiffs further show unto your honors, that the said intended marriage was soon afterwards had and solemnized between the plaintiff J. M. P., and the plaintiff E. P.; and that the plaintiffs A. P. and C. P. are the only children of the said marriage. And the plaintiffs further show, that the said defendant I. P. L. declines to act in the trusts of the said indenture, and is desirous to be discharged therefrom, but by reason that no power is reserved in the said indenture for the appointment of a new trustee, the plaintiffs are advised that he cannot be discharged from such trusts, nor any new trustee appointed without the aid of this honorable Court. *To the end*, therefore, that the said defendant I. P. L. may upon his corporal oath, &c.

And that the said defendants may answer the premises, and that it may be referred to one of the masters of this honorable Court to appoint a new trustee under the said marriage settlement, in the place and stead of the said defendant; and that the said defendant may be directed to join in such instrument or instruments as may be

* 2031 necessary * for conveying or releasing the said trust premises to your orator, S. N. M., and such new trustee upon the trust of the said settlement; and that thereupon the said defendant may be

¹ See Bowditch v. Banuelos, 1 Gray, 220. Where no trustees were named in a will, in which was a bequest of a certain sum to "the Universalist Religious Denomination in the County of Berkshire, as a permanent fund, the use to be applied annually for the support of that denomination," it was held, that a Court

of Equity would appoint trustees to execute the trust, on a bill filed by the organized Universalist societies of the county. First Universalist Society in North Adams and others v. William Fitch and another, Administrators, 8 Gray, 421.

discharged from the trusts of the said indenture. [And for further relief.] May it please, &c.

74. *Petition for discharge as trustee, and transfer of trust property to new trustee.¹*

To the Honorable the Justices of the Supreme Judicial Court.

Respectfully show the petition of J. L. B., of B., in the county of S., Esquire, that by force of an indenture recorded with Suffolk Deeds in Lib. 627, fol. 291, he was substituted in the place and stead of E. A. B., Esquire, to be trustee under two certain indentures made by M. A. T., of said B., single woman, and recorded respectively with Suffolk Deeds in Lib. 574, fol. 229, and Lib. 618, fol. 186; that as such trustee he holds certain real estate in said B., and also certain personal property upon the trusts set forth in said two original indentures, all which said indentures are herewith submitted to the Court, that after making said two original indentures, said M. A. T. intermarried with and is now wife of C. M. de los S. B., Secretary of Legation to her Catholic Majesty the Queen of Spain, and now resident at W., in the District of C.; that there is no person, to the knowledge of the petitioner, interested in said trust property and estate except said C. M. de los S. B. and M. A. his wife; that, in the event of the death of said M. A. without children, and without having exercised the power of appointment given her by said indenture, her collateral relations, who would then be her heirs-at-law, may become interested therein; that she has now living a mother and three sisters, viz., M. M. B., wife of E. A. B., aforesaid, now residing in said B.; A. T., single woman, a member of the family of said E. A. B., and also residing in said B.; E. F. R., wife of H. G. R., junior, of B., in the State of M.; and E. T. R., being now commorant at said B., in the family of said E. A. B.; and M. S. P., a minor, wife of R. T. P., Esquire, both now absent in Europe, said R. T. P. having been late a resident in said B.; that said M. A. has requested the petitioner to transfer said trust property and estates to a new trustee, and he is desirous so to do.

Wherefore the petitioner prays the honorable Court that due notice may be ordered to all persons, and that he may be discharged from said trust, and that such order and decree may be passed as to the appointment of a new trustee, either with or without bonds for the faithful performance of said trust, and as to the conveyance and transfer of said trust property and estates as to the Court may seem just * and equitable, to the end that the petitioner, complying with * 2032 and fulfilling said order and decree on his part, may be as fully and effectually released and discharged from all liability in the premises as if he had never assumed said trust. And as in duty bound will ever pray.

J. I. B.

B., April 13, 1852.

¹ Bowditch v. Bannuelos, 1 Gray, 220.

SECTION XXIV.

Bills by Underwriters in Respect of Frauds practised upon them in the Insurance of Ships.

75. *Bill by underwriters for a fraud practised upon them in the representation of the voyage. Prayer for an injunction to restrain the defendants from proceeding at Law, and for a commission to examine witnesses abroad.*

States that W. W., of, &c., alone or jointly with some other persons, was or were, or pretended to be, before and at the time of making the insurance after mentioned, owner or owners of a certain ship or vessel called —, and they, or one of them, particularly the said W. W. or I. B. and T. G., of the city of —, insurance brokers and copartners, as agents for and in behalf of the owners or owner of the said ship, on or about —, caused a policy of insurance to be opened at the city of —, on the said ship — and her cargo, against the danger of the sea and capture of any foreign enemy, on a voyage to be performed by the said ship from the port of — to —, and which voyage, it was upon such occasion pretended, that the said ship was immediately to make, and such insurance was accordingly effected at the city of —, on or about, &c., and amongst other persons who underwrote or subscribed the said policy, plaintiffs respectively underwrote the same for the sum of \$— each at or after the premium of — per cent to return — per cent for having departed with the W. I. convoy if arrived, i. e., plaintiff I. R. the sum of \$— upon the said ship, which was valued in the said policy at \$—, and the rest of plaintiffs the like sum of \$— each, upon the cargo on board the said ship; as in and by the, &c.

That notwithstanding the representations made to the plaintiffs at the time of making the aforesaid insurance, with regard to the port of the said ship's destination, the voyage really intended to be made by her was not from the port of —, as mentioned and expressed in the said policy, but from the port of — to — or some other port in —, or to some other different port or place than —. And

* 2033 the * plaintiffs having been deceived and imposed upon by such untrue representations of the said ship's intended voyage, the said insurance was fraudulent, and therefore the said insurance was null and void.

That the said ship afterwards sailed from the port of —, with some other ships which were to proceed under convoy for —; but the said ship — soon after quitted the said fleet and convoy, and deviated from her regular course or track of such a voyage, and proceeded to some other port or place not specified or mentioned in the said policy of insurance, particularly to the port of —, or some other port or place in —, where the said ship and her cargo were sold for a large sum of money in the whole, and which was afterwards received by the said W. W. and the other joint owners of the ship or some or one of them.

That the plaintiffs well hoped, under the circumstances aforesaid, they should not have been called upon for payment of any sums of money whatsoever on account of their having subscribed or underwrote the aforesaid policy of insurance.

But the defendants pretend that the insurance was not made fraudulently or unfairly, and that the plaintiffs were not in any manner imposed upon therein, and that the voyage actually intended to be made by the said ship — was the voyage particularly mentioned and specified in the said policy; viz., from the port of — to —, and that she never made any deviation therefrom. And they also sometimes pretend that the said ship was lost or foundered at sea in the regular course or track of the said voyage. And at other times they give out that the said ship was in the course of her voyage captured as lawful prize, and that for some or one of such reasons the plaintiffs and the several other underwriters on said policy became liable to pay the several sums insured or underwrote by them respectively on the aforesaid policy.

The plaintiffs charge the contrary, and that the plaintiffs were deceived and imposed upon in manner aforesaid respecting the port or place of the said ship's destination, for that the said ship was at the time, and upon the occasions aforesaid, destined or intended for a voyage to — or some other port in —, or some other port or place in —. And the plaintiffs charge that the said ship, in the course of the said pretended voyage, separated from the rest of the ships or fleet, and made a deviation and proceeded or sailed for the port of —, or some other port or place in —, or to some other port or place different from the port or destination mentioned in the said policy, where the captain or some other persons or person on board sold and disposed of the said ship and cargo as hereinbefore mentioned, and that divers remittances were afterwards made to —, on account of such sales or the produce thereof, to the said confederates the owners or some or one of them, such fraudulent * insurance * 2034 as aforesaid having been previously made thereon, pursuant to and in consequence of some plan or scheme concerted or contrived between the said confederates or some or one of them and the said —, the captain, or to which they, some or one of them, were or was privy, and that it was never meant, intended, or understood by and between the said confederates or any of them, that said ship should perform the voyage specified or mentioned in the aforesaid policy of insurance or proceed to —. And the plaintiffs moreover charge that the said ship was not lost, captured, or taken by the enemy, or however, not in the regular course or track of a voyage from — to —, as mentioned in the said policy of insurance. And as evidence thereof plaintiffs charge that the said captain or any other person never made any protest of the loss or capture of the said ship as is usual or customary in such cases, and which would have been made if the said ship had actually been lost or captured, nor was the said ship ever condemned, or any sentence of condemnation passed upon her as lawful prize. And as a further evidence of the aforesaid deception and im-

sition, plaintiffs charge that the aforesaid confederates [*the insurance brokers*], or some persons by their orders or directions, or with their privity or consent, some time in or about the month of —, wrote and sent a letter to their agent or correspondent at —, employed by them to effect the aforesaid insurance, directing him to apply to the plaintiffs or some other of the underwriters on the said policy, and to offer to cancel the said policy upon the repayment of the premiums; and such a proposition and offer was also made by the direction or with the knowledge of the said confederates [*the owners*], and in consequence of their knowledge, conviction, and belief, that the said insurance was fraudulently and unfairly made on the part of the said confederates [*the owners*], and that the underwriters on the said policy were deceived or imposed upon respecting the port of her destination, and that the said ship was not actually lost or captured, and that for such or some other reasons the said policy was null and void, and that the said confederates [*the owners*] have no just claim or demand upon the underwriters in respect of the sums insured or underwrote thereon. And plaintiffs also charge that divers letters or notes have been written by and sent to, or received by or passed between the said defendants or some or one of them, and their correspondents or agents at —, or the persons or person employed by them the said confederates, or some or one of them, in or about the making the aforesaid insurance, and the said —, the captain of the said ship, or some or one of them relating to or in some manner concerning the several matters and things hereinbefore mentioned and inquired after, particularly the making of the aforesaid insurance, and the fraud or deception practised or intended to be practised upon the plaintiffs and the underwriters of said policy, and

* 2035 which said * letters or notes, or some copies, abstracts, or extracts thereof, or of some or one of them, together with divers other papers, memorandums, or other writings relating to the matters aforesaid, are now, or lately were, in the custody, possession, or power of them, the said confederates, or some or one of them. And the plaintiffs also charge that the truth of the several matters and things hereinbefore charged and set forth, and particularly that the plaintiffs were deceived or imposed upon in the making of the aforesaid insurance, and that the said ship was not lost or captured, and that the said confederates [*the owners*] of the said ship have no just or fair demand upon the plaintiffs by virtue of, or under the aforesaid policy, would appear in and by the said letters and papers, in case the said confederates would produce the same, but which they refuse to do, although they have been frequently applied unto for that purpose; and under such or the like pretences as aforesaid, or some others equally unjust or unreasonable, the said confederates insist on the contrary, and the said confederate W. W. has also lately commenced separate actions at Law against the plaintiffs in — Court —, to recover the sums respectively underwrote by them on the said policy, and he threatens to proceed to judgment and execution thereon, well knowing that the plaintiffs are not able to make a good defence at Law in the said actions, without a full disclosure and discovery of the several matters

aforesaid, and without the benefit of the testimony of their witnesses who reside at —— and —— and other parts of ——, and also in other parts and places abroad, and who could prove the truth of the several matters and things hereinbefore charged and inquired after. And the said confederates refuse to discover to the plaintiffs the names or places of abode of the other persons, whom they sometimes allege to be joint owners with them of the said ship. All which actings, &c. To THE END, therefore, &c.

And that the plaintiffs may have a full disclosure and discovery of the several matters and things aforesaid, and that the said defendant W. W. may be restrained, by the injunction of this honorable Court, from proceeding in the said actions already commenced by him, and that he and all the said other defendants may in like manner be restrained from commencing or prosecuting any other actions or action, or in any other manner proceeding at Law against the plaintiffs or any of them touching the several matters and things aforesaid; and that the plaintiffs may have one or more commission or commissions issuing out of and under the seal of this honorable Court, for the examination of their witnesses at —— and ——, and other parts of ——, or any other parts or places abroad as there may be occasion. [And for further relief.] May it please, &c.

* SECTION XXV.

* 2036

*To restrain Waste.*76. *To restrain waste by persons having limited interests in property.*

The plaintiff A. B., of, &c. That the plaintiff before and at the time of making the indenture hereinafter mentioned was seised in his demesne as of fee, of and in certain tenements, with the appurtenances, situate at L., in the county of N., hereinafter particularly described; and being so seised, by a certain indenture, bearing date the — day of —, in the year —, and made between the plaintiff of the one part, and C. D., of, &c. (the defendant hereinafter named), of the other part, the plaintiff did demise, lease, set, and to farm let, unto the said C. D., his executors, administrators, and assigns, all, &c.

To hold the same, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, from the — day of —, then last past, for the term of — years thence next ensuing, at the yearly rent of \$ —; and the said C. D. did thereby for himself, his executors, administrators, and assigns, covenant, promise, and agree with the plaintiff, his heirs and assigns, that he, the said C. D., his executors, administrators, or assigns, would during the said term keep the said premises in good repair, and manage and cultivate the said farm and lands in a proper, husband-like manner, according to the custom of the country as by the said indenture of lease, reference being thereto had, will more fully appear. And the plaintiff further showeth

unto your honors, that the said C. D., under and by virtue of the said indenture, entered upon the said demised premises, with the appurtenances, and became, and was possessed thereof for the said term, so to him granted thereof by the plaintiff as aforesaid. And the plaintiff further showeth unto your honors, that at the time the said C. D. entered upon the said premises, the same were in good repair and condition, and the plaintiff hoped the said C. D. would so have kept the same, and have cultivated the said lands in a proper and husband-like manner, according to the custom of the country, and that such part of the said premises as consisted of ancient meadow or pasture ground would have remained so, and not have been ploughed up, and converted into tillage; and that no waste would have been committed on the said premises. But now so it is, may it please your honors, the said C. D., combining, &c., pretends, that the said premises now are in as good repair as when he entered in or to the same, and that he has cultivated the said farm and lands in a proper and husband-like manner, and that no waste has been committed by him thereon.

* 2037 * Whereas the plaintiff charges, that the said premises and the buildings, out-houses, gates, stiles, rails, and fences were in a good and perfect state and condition when the said C. D. entered upon the said premises, but now are very ruinous and bad, and the land very much deteriorated, from the wilful mismanagement and improper cultivation thereof by the said C. D., who has ploughed up certain fields called —, containing respectively — acres, and has otherwise committed great spoil, waste, and destruction in, upon, and about the said premises; and the plaintiff further charges, that the said C. D. ought to put the said premises into the same condition they were in when he entered thereon, and to make the plaintiff a reasonable compensation for the waste and damage done or occurred thereto; and that the said C. D. ought to be restrained, by the order and injunction of this honorable Court, from ploughing up the remaining pasture fields, part of the said demised premises, and particularly the fields called — and —, and containing respectively — acres, which he threatens to do, and also restrained from committing any further or other waste, spoil, or destruction, in and about or to the said estate and premises, or any part thereof. All which actings, &c.

And that the said C. D. may be compelled by the decree of this honorable Court to put the said premises into such repair and condition, in every respect, as far as circumstances will permit, as the same were in when he entered upon the same, under and by virtue of such demise as aforesaid; and may also be decreed to make a reasonable compensation to the plaintiff for all waste done, committed, or suffered by him on the said premises, and all damage occasioned thereto by his mismanagement or neglect (the plaintiff hereby waiving all pains and penalties incurred by the said C. D. on account of committing waste on the said premises), and that he may be decreed to keep the said premises in good and sufficient repair and condition, during the remainder of his interest therein, and to manage and cultivate the said farm and lands in a proper and husband-like manner, according to the

custom of the country, and that he may be likewise restrained, by the order and injunction of this honorable Court, from ploughing up the said remaining pasture fields, forming part of the said demised premises, and particularly the said fields called — and —, and from committing or permitting any further waste or spoil in, on, or to the said demised premises, or any part thereof. [And for general relief.] May it please, &c. [End by praying an injunction in the terms of the prayer, and by praying process of a subpoena, as in forms Nos. 43, 55, ante, pp. 1887, 1888.]

* SECTION XXVI.

* 2038

To prevent the Creation of a Nuisance where Irreparable Injury to an Individual would ensue.

77. *Bill for an injunction to prevent the obstruction of ancient windows.¹*

That the plaintiff A. B. now is, and for a considerable time past has been, possessed of a certain messuage or dwelling-house, with the appurtenances, situate at D., in the county of C., in which, for twenty years last past there has been, and still of right ought to be, two ancient windows to admit of light and air, for the convenient and wholesome use, occupation, and enjoyment of the said house. And the plaintiff further sheweth unto your honors, that G. H., of, &c. (the defendant hereinafter named), is possessed of a piece or parcel of land adjoining or contiguous to that part of the plaintiff's said house wherein are such windows as aforesaid; and the said G. H. has lately begun to dig the foundation for a certain wall or building in that part of the said piece of ground which is immediately opposite, and is within the space or distance of four feet only from such part of the plaintiff's said house as aforesaid; and the said G. H. has already erected, or caused to be erected, part of such intended wall or building of considerable height, and exceeding the height of twenty feet, which has greatly darkened the plaintiff's said dwelling-house and the appurtenances, and prevented the light and air entering the plaintiff's said house, through the said windows, and rendered the same close, uncomfortable, and unwholesome, and unfit for the habitation of the plaintiff. And the plaintiff further sheweth unto your honors, that, in consequence of such proceeding on the part of the said G. H. as aforesaid, the plain-

¹ In a case where the circumstances justified the Court in granting a mandatory injunction at the hearing, to compel the defendants to pull down newly erected buildings to the height of the former ones, on the ground of obstruction to the plaintiff's light and air; but where the plaintiff, having heard of the intended structure in April did not complain till the November following, during which time the

defendants had laid out large sums; and when the plaintiff had also, since bill filed, made an offer to take a money compensation for the injury to her rights, the Court, instead of an injunction, directed an inquiry as to the amount of damages sustained by the plaintiff. Senior v. Pawson, L. R. 3 Eq. 330. For form of decree in this case, p. 336.

tiff, in or as of last — term, brought an action on the case in, &c., which has since been tried, and a verdict obtained for the plaintiff, for the sum of \$ —, for the damages sustained by the plaintiff by the erection of such wall or building as aforesaid.

And the plaintiff further showeth, that the plaintiff, both previously to, and since the determination of such action as aforesaid, frequently by himself and otherwise applied to the said G. H., and re-

* 2039 quested him *not only to desist from continuing to erect, but also to take down and abate such wall or building, and nuisance,

so as to prevent the plaintiff being so injured thereby as aforesaid, which the plaintiff hoped would have been done. But now so it is, may it please, &c., the said G. H., combining, &c., still proceeds in the erection of the said wall or building, and he pretends that, as an absolute owner of the said piece of ground, he has good right to erect the said wall or building on any part thereof, without any interruption or prevention by or on the part of the plaintiff; and he also pretends that the said wall or building is erected on an ancient foundation, and therefore, notwithstanding it may obstruct the plaintiff in the free enjoyment of the light and air, which was admitted through the plaintiff's said windows, that he is legally entitled so to do. Whereas the plaintiff charges the contrary thereof to be true, and that the said G. H. is only entitled to exercise such acts of ownership in and upon the said piece of ground as are legal and proper, and not to erect a wall or building so near to the plaintiff's messuage and dwelling-house as to obstruct his ancient windows, and become a nuisance to the plaintiff; and that even if the said wall or building be erected on an ancient foundation, but which the plaintiff nowise admits, yet the said premises being far distant from L., no right or privilege, to the injury or prejudice of the plaintiff, by reason thereof attaches to the said G. H., as such owner of the said piece of ground as aforesaid. And the plaintiff further charges, that from the slight and perishable materials of which the said wall or building is composed, the same is in great and constant danger of falling and doing considerable injury to the plaintiff, as the said G. H. well knows, but nevertheless he persists in his intention of continuing such erection, which will render the said wall or building much more injurious and dangerous to the plaintiff than the same now is, unless he shall be restrained therefrom by the order and injunction of this honorable Court. And that the said G. H. may make a full and true disclosure and discovery of and concerning the several matters aforesaid; and that the said G. H. may be restrained, by the order and injunction of this honorable Court, from proceeding in the erection of the said wall or building; and that he may be decreed to obviate and abate the said nuisance, so as to render the plaintiff's enjoyment of his said dwelling-house, with the appurtenances, as safe, wholesome, and fit for the plaintiff's habitation as the same was previously to the commencement of the erection of such wall or building as aforesaid. [And for general relief.] May it please, &c. [End with praying an injunction in the terms of the prayer, and praying process, &c.]

* SECTION XXVII.

* 2040

*A Bill quia timet.¹*78. *Bill by a surety to compel the debtor on a bond in which he has joined to pay the debt incurred by breach of covenant.*

The plaintiff A. B., of, &c. That the plaintiff, at the special instance and request of C. D., of, &c. (one of the defendants hereinafter named), joined with the said C. D. in a certain bond or writing obligatory, bearing date the — day of —, whereby the plaintiff and the said C. D. respectively acknowledge themselves to be jointly and severally held and bound to E. F., of, &c. (the other defendant hereinafter named), in the penal sum of \$ —, subject to a condition thereunder written, that if the said C. D. should well and truly observe, perform, fulfil, and keep all and every the covenants whatsoever, which, on the part of the said C. D. ought to be observed, fulfilled, and performed, and which were contained in a certain indenture, bearing even date with the said writing obligatory, and made between the said C. D. of the one part, and the said E. F. of the other part, according to the true intent and meaning of the said indenture, then the said bond or obligation should be void. And the plaintiff further showeth unto your honor, that the said indenture in the said writing obligatory mentioned, and which bore even date therewith, was made between the said E. F. of the one part, and the said C. D. of the other part; and the said E. F. did thereby demise, lease, set, and to farm let, unto the said C. D., his executors, administrators, and assigns, all that messuage, &c. [Here state the subject of the demise.] To hold the same, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, from the — day of —, then last past, to the full end and term of — years thence next ensuing, and fully to be complete and ended; yielding and paying therefor, yearly, and every year, unto the said E. F., his heirs and assigns, the clear yearly rent or sum of \$ —, payable on the first day of January in each year. And the said C. D. did in and by the said indenture, for himself, his executors, administrators, and assigns, covenant, promise, and agree to and with the said E. F.,

¹ *Eldridge v. Hill*, 2 John. Ch. 281, states the rule for the allowance of such a bill.

For case of a bill in Equity to quiet title, see *Clouston v. Shearer*, 99 Mass. 209; *Tucker v. Kenniston*, 47 N. H. 270; *ante*, p. 1961, note. A bill for relief on the ground of danger of loss of a legacy for life, subject to a limitation over by way of remainder, is in the nature of a bill *quia timet*, and may be filed as well against the executor himself, where the fund is in his hand, as against the legatee for life, where the fund is in his hand. *Rowe v. White*, 16 N. J. Ch. 41.

A bill to remove a cloud upon title and to quiet the possession of real estate cannot be maintained by one out of possession. *Frost v.*

Spitley, 121 U. S. 552, 556; *Northern Pacific R. Co. v. Amacker*, 7 U. S. App. 33, 42. Equity may interfere to prevent a threatened cloud on title, as well as to remove an existing one; in such case there must appear to be a determination to create a cloud, and the danger must be more than merely speculative or potential. *Finch J. in King v. Townshend*, 141 N. Y. 358, 361, citing *Sanders v. Yonkers*, 63 N. Y. 492. A suit for an injunction against an apprehended injury to realty may be treated as a suit to quiet title, the averments being appropriate and sufficient, though there is no special prayer for such relief. *Stockton v. Lockwood*, 82 Ind. 158.

his heirs and assigns (amongst other things), in manner following; that is to say, that from and after the said messuage, &c., &c., should have been put in good and tenantable repair, by and at the expense of the said E. F., his heirs or assigns, he the said C. D., his executors, administrators, and assigns, should and would, during the said continuance of the said demise, at his and their own costs and charges, support, uphold, and keep the said messuage, &c., &c., in good and tenantable repair, order, and condition, and so leave the same at the expiration, or other sooner determination of the said term, as by the said indenture, reference being thereunto had, will appear. And the plaintiff further showeth unto your honors, that the said C. D., under and by virtue of the said indenture, entered into and upon the said demised premises, and became and was possessed thereof for the term so granted to him as aforesaid, and the said E. F. put the said messuage, &c., &c., into good and tenantable repair at his own expense; and the plaintiff therefore hoped that the same would have been so kept by the said C. D. during the continuance of the said demise, and left by him at the expiration thereof; and that he would have performed all the other covenants in the said indenture contained, and by and on the lessee's part and behalf to be kept, done, and performed, and have freed and discharged the plaintiff from all liability in respect of the said bond. But now so it is, may it please your honors, the said C. D., acting in concert with the said E. F., and combining, &c., has not, as is alleged by the said E. F., kept and left the said messuage, &c., &c., in good and sufficient tenantable repair, according to his said covenant, and the said E. F. therefore threatens and intends to proceed against the plaintiff on the said bond for the amount of the damages which he alleges he has sustained by breach of such covenant by the said C. D., as aforesaid; and the said C. D., although often requested by the plaintiff so to do, refuses to protect and indemnify the plaintiff against any loss or liability which the plaintiff may sustain or be put unto by joining in such bond as aforesaid.

And that the said C. D. may be decreed by this honorable Court forthwith to pay and satisfy the said E. F. any demand which he may have against the plaintiff as co-obligor with the said C. D. in such bond as aforesaid, on account of the breach for non-performance of the said covenant, or of the several other covenants contained in the said indenture of demise, on the part and behalf of the lessee to be kept, done, and performed, or any of them, or otherwise howsoever, under and by virtue of the said bond; and that the plaintiff may be indemnified and discharged by the said C. D. from all loss and liability whatsoever in respect thereof. [And for general relief.] May it please your, &c. [End by praying subpoena against the said C. D. and E. F.]

has since continued to be, and still is, a Joint-Stock Banking Company, composed of more than six persons, carrying on business at Lothbury, in the city of London, and at —, and other places, in the county of Middlesex, and the plaintiff is one of the members and a duly registered officer of the said Banking Company, and as such is able to sue and be sued under the provisions of the statute in that case made and provided.

80. *In a case of a Joint-Stock Banking Company, where their public officer is made a defendant.]* The London and County Bank is a Joint-Stock Banking Company duly registered, and the defendant is the public officer thereof, who is entitled to sue and be sued in respect of all transactions in which the said Banking Company is concerned.

81. *Where deeds not in plaintiff's possession.]* The plaintiff has not nor ever had in his possession or power the conveyances and other assurances by which, &c., but the same are now in the possession or power of A. S., or some other of the defendants hereto, and therefore the plaintiff cannot set forth the particulars of such conveyances and other assurances more perfectly than is hereinbefore mentioned, but he claims leave to refer thereto when the same shall be produced.

82. *Where defendant out of jurisdiction.]* The said — is now residing in parts beyond the seas, out of the jurisdiction of this honorable Court; that is to say, at —, in the Kingdom of —.¹

83. *Accumulations of funds.]* And they the said defendants, — [the executors], from time to time laid out and invested such rents and profits in the purchase of government stocks, in their names, upon the trust and according to the directions of the said will, and they again laid out and invested the dividends and interest of such stock in the purchase of like stock in their names, by way of accumulation, in the manner directed by the said will.

84. *Allegation in bill by assignee of debt against debtor.]* The said indenture of assignment does not contain any power authorizing the plaintiff to use the name of the defendant in any action or proceedings * at Law for the recovery of the said debt of £ —, so * 2043 due and owing from the said —, and the defendant refuses to permit the plaintiff to use his name in the action against the said —, for the recovery of the said debt of £ —, and the defendant, acting in collusion with the said —, threatens and intends to receive the said debt from the said —, and to release him therefrom.¹

85. *Prayer for transferring fund from the credit of one cause to that of another.]* That the Accountant-General of this honorable Court may

¹ If a defendant out of the jurisdiction is served with a bill, he must also be served with the subsequent proceedings, as if he were within the jurisdiction. *Lanham v. Pirie*, 2 Jur. N.S. 1901, V. C. 8.

¹ The assignee of a debt cannot, unless some impediment exists in the way of his recovering

his debt at Law by using the creditor's name, maintain a suit in Equity. *Hammond v. Messenger*, 9 Sim. 327; *Rose v. Clarke*, 1 Y. & C. C. C. 534; *Sewell v. Moxsey*, 2 Sim. N. S. 189; *Clark v. Cort, Cr. & Ph.* 154; see *ante*, p. 197, notes.

be ordered to transfer the said £ —— Bank £3 per cent annuities, and the said sum of £ —— cash, now standing in his name in the books of the Governor and Company of the Bank of England, in trust in the said cause "S. v. B.," and all dividends which may accrue thereon previously to such transfer, from the said cause of "S. v. B." into this cause, and that the same may be duly administered in this cause, and be paid to or secured for the benefit of the parties entitled thereto.

86. *Prayer for the adoption of proceedings had in another suit.]* That in making the inquiries, and taking the accounts, required for the purpose of this suit, any of the proceedings had in the said suit of "A. v. B.," which can properly or usefully be adopted, may be adopted accordingly; and that the costs of the said suit of "A. v. B.," remaining unpaid (if any) may be prosecuted for in this suit.

87. *Prayer that boundaries may be ascertained.]* That the boundaries of the said real estate of the said J. T. may be defined and set out, under the decree of this honorable Court; and that all necessary directions may be given for that purpose.

88. *For declaration of rights.]* That the rights and interests of all parties in the said real and personal estate may be ascertained and declared.

89. *Respecting formal party.]* That the defendant A. B., upon being served with a copy of the bill, may be bound by all the proceedings in the cause.

ORIGINAL BILLS NOT PRAYING RELIEF.

SECTION XXVIII.

*Bill to perpetuate Testimony.*90. *Bill to perpetuate the testimony of witnesses to a will.*

Humbly complaining, sheweth unto your honors the plaintiff A. B., of, &c., that C. D., late of, &c., deceased, before and at the time of making his will hereinafter mentioned, was seised in fee of and in divers freehold estates, which are hereinafter more fully mentioned and described; and the said C. D. being so seised as aforesaid, and being of sound and disposing mind, memory, and understanding, duly made and published his last will and testament in writing, bearing date the — day of —, signed by him, the said C. D., and subscribed and attested according to law; and which said will, with the attestation thereof, is in the words and figures following; that is to say: [set out the will and the attestation verbatim], as by the said will and the attestation clause thereof, reference being thereto had, will appear.

And the plaintiff further sheweth unto your honors, that the said C. D. departed this life on or about the — day of —, without having revoked or altered his said will, leaving his brother E. D., of, &c., the defendant hereinafter named, his heir-at-law; and upon the death of the said testator, the plaintiff, under and by virtue of the said will, entered upon and took possession of all the said freehold estates thereby devised to the plaintiff for life, and the plaintiff is now in possession thereof. And the plaintiff hoped that no disputes would have arisen respecting the devises contained in the said will, or the validity thereof. But now so it is, &c., the said E. D. pretends that the said will is void and ineffectual; and although he will not dispute the validity thereof during the lives of the subscribing witnesses thereto, yet he threatens and intends to do so when they are dead, so that the plaintiff may be deprived of their testimony.

And the plaintiff further sheweth, that all of the said subscribing witnesses are upwards of seventy years of age and in feeble health [or are about to depart from the Commonwealth or State], and that the * plaintiff fears the testimony of the said witnesses may * 2045 be lost by their death [or departure from the Commonwealth or State] before the cause can be investigated in a Court of Law.

In consideration whereof, &c.; and that the plaintiff may be at liberty to have the several subscribing witnesses to said will examined,

and that the plaintiff, if necessary, may have a commission or commissions for the examination of the said subscribing witnesses to the said will, to the end that their testimony may be preserved and perpetuated; and that the plaintiff may be at liberty to read and make use of the same on all future occasions, as he shall be advised. May it please your honors, &c.

SECTION XXIX.

Bill for Discovery.

91. *Bill for discovery in aid of an action at Law; the defendant having pleaded a set-off, and inserted items in the particular of such set-off which ought not to have been charged against the plaintiffs, being trustees under the deed of trust executed by two partners in trade for the benefit of their creditors.*

Humbly complaining, show unto your honors the plaintiffs P. M., of, &c., J. A., of, &c., and J. R., of, &c., that by an indenture of assignment bearing date —, and made between J. G. and J. W., therein described, of, &c., of the first part, the several persons who had thereunto set their hands and affixed their seals, creditors of the said J. G. and J. W., as copartners as aforesaid, or of the said J. G., on his own separate account, of the second part, and the plaintiffs of the third part, they the said J. G. and J. W. (amongst other things), bargained, &c. [setting out that part showing the assignment to the plaintiffs, and particularly the clause which gives them power to sue], as in and by, &c. And the plaintiffs further show unto your honors, that at the time of the execution of the said indenture there was justly due and owing to the said J. G. and J. W., on their partnership account, from R. K., of, &c. (the defendant hereinafter named), the sum of \$ —, being the balance of an account between the said J. G. and J. W., the particulars whereof are set forth in the schedule hereto. And the plaintiffs further show that they have repeatedly applied to the said R. K., to pay to them as such trustees as aforesaid the said sum of \$ —, with which just and reasonable requests the plaintiffs well hoped the said defendant would have complied, as in justice and equity he ought to have done.

* 2046 * BUT NOW SO IT IS, &c., he has absolutely refused so to do; and the plaintiffs have therefore been compelled to commence an action in the names of the said J. G. and J. W., against the said defendant to compel the payment of the said balance; and the plaintiffs charge that the said defendant has pleaded a set-off in the said action, and has delivered a particular of such set-off, which as far as it extends, to the date of the said assignment to the plaintiffs, corresponds in substance with the creditor side of the account set forth in the schedule hereto; but the said defendant has added thereto three articles for copper delivered in the year —, for which he claims credit in the said action. Whereas the plaintiffs charge that the said defendant at or

about the time of the execution of the said assignment to the plaintiffs was apprised thereof, or had some reason to know, believe, or suspect, and did know, believe, or suspect, that the said J. G. and J. W. had made such assignment, or some assignment of their copartnership property to the plaintiffs or to some trustees for the benefit of their creditors. And the plaintiffs further charge that the said copper was delivered at ——, which had belonged to the said J. G. and J. W., and had been comprised in the said assignment to the plaintiffs, and had been afterwards sold by the plaintiffs to the said J. G.; and the said J. G. applied to the said defendant to purchase the said copper on his the said defendant's credit, or to guarantee the payment for the said copper to the person from whom it was bought, by reason that the circumstances of the assignment to the plaintiffs being known, the said J. G. could not obtain credit for the said copper in his own name alone; and the said defendant for that reason lent his credit to the said J. G. for the purchase of the said copper, or guaranteed the payment thereof, trusting to the personal responsibility of the said J. G. And the plaintiffs further charge that the said defendant has also added to his said particular of set-off a sum of \$ ——, for a year and a half's wages for one J. B. C. Whereas the plaintiffs charge that the said defendant has no just right to any such demand against the plaintiffs as trustees under said assignment; and the said defendant refuses to set forth how he makes out such his claim, and when and up to what time he computes the said wages. And the plaintiffs charge that they are advised that they cannot safely proceed in the said action so commenced by them as aforesaid in the names of the said J. G. and J. W., without a discovery of the circumstances hereinbefore stated from the said defendant. To THE END, therefore, &c.

And that the said defendant may set forth how he makes out such his said claim, and when and up to what time he computes the said wages, and whether the plaintiffs can safely proceed in the said action so commenced by them as aforesaid, in the names of the said J. G. and J. W., without a discovery of the circumstances hereinbefore stated from the said defendant. And that the said defendant may make a * full and true discovery of all and every the matters * 2047 aforesaid. May it please, &c.

[*Pray subpoena against R. K.*]

92. Bill of discovery and prayer. [Modern English Form.]

Allegation or charge.] That the plaintiff is unable safely to defend the action [or suit] which has been so commenced [or instituted] and is now pending in the said Court of —— [or in this honorable Court], without a full discovery from the said defendant of all and singular the matters and things hereinbefore stated.¹

¹ A person filing a bill of discovery is discovery. Heming v. Dingwall, 2 Ph. 212, bound to state the purpose for which he wants 214.

Prayer.

That the defendant may make a full and true discovery and disclosure of and concerning the matters hereinbefore stated.²

² This is the prayer, where no relief is sought, but merely a discovery from the defendant. *v. London Dock Co.* 1 Jur. N. S. 23; *Martin v. Haming*, 10 Exch. 478.

The powers which Courts of Law, as well as Equity, now generally possess, under recent statutes, of obtaining discovery from parties to actions and suits, have rendered bills of discovery of rare occurrence; but there may be occasions in which it would be expedient to file such a bill. *Lovell v. Galloway*, 19 Beav. 1.

The jurisdiction of Courts of Law, to obtain discovery under late English statutes, is not limited to matters respecting which a discovery can be obtained in a Court of Equity. *Osborn*

v. London Dock Co. 1 Jur. N. S. 23; *Martin v. Haming*, 10 Exch. 478.

The words, "that such other order may be made upon the defendants as the nature of the case may require," do not convert a bill of discovery into a bill for relief. *Southeastern Ry. Co. v. Submarine Telegraph Co.* 18 Beav. 427; 17 Jur. 1044.

The prayer for discovery in a bill for relief does not give Equity jurisdiction unless inability to establish the facts at Law is alleged. *Cecil National Bank v. Thurber*, 59 Fed. Rep. 913.

* CHAPTER IV.

* 2048

BILLS NOT ORIGINAL.

SECTION XXX.

1. *Supplemental Bills.*¹

93. *Supplemental bill against the assignee of a bankrupt defendant.*

Humbly complaining, show unto your honors the plaintiffs A. B. and C. D., of —, that the plaintiffs did, in or as of — term — exhibit their original bill of complaint in this honorable Court against B. L., of, &c., praying that an account might be taken of the personal estate, effects, &c. And the plaintiffs further show that the said defendant, having been served with process to appear, appeared accordingly and put in his answer to the said bill, and the plaintiffs replied to the said answer, but before any further proceedings were had in the said cause, and on or about the — day of — a commission of bankruptcy — was awarded and issued against the said B. L., who has been thereupon duly found and declared bankrupt; and E. D., of —, the defendant hereinafter named, having been since duly chosen assignee of the estate and effects of the said bankrupt, all the estate and effects late of the said bankrupt have been duly conveyed and assigned to the said E. D. And therefore the plaintiffs are advised that they are entitled to the same relief against the said E. D., as they would have been entitled to against the said B. L., if he had not become bankrupt. To THE END, therefore, &c.

And that the plaintiffs may have the full benefit of the said suit and proceedings therein against the said E. D., and may have the same relief against him as the plaintiffs might or could have had against the said B. L., in case he had not become bankrupt; or that the plaintiffs may have such further or other relief in the premises as to your honors shall seem meet. May it please, &c.

¹ The occasions for the use of supplemental bills are very much limited in England by late acts of Parliament and rules of Court. See ante, Vol. II. p. 1589, *et seq.*

In Rhode Island, supplemental bills, bills of revivor, and cross-bills are made unnecessary by statute. Pub. Stats. c. 192, §§ 14, 16. As to adding new parties by supplemental bill, see

Tubman *v.* Wason Manuf. Co. 44 Fed. Rep. 429; Hospes *v.* Northwestern Manuf. Co. 22 id. 565. New matters arising after the suit was instituted, if introduced by a supplemental bill, will not be permitted to change the rights of the parties before the Court. Ledwith *v.* Jacksonville, 32 Fla. 1.

* 2049 * 94. *Supplemental bill in a patent cause, stating the fact of an extension since the filing of the original bill.*

To the Judges of the Circuit Court of the United States, for the District of Massachusetts.

In Equity.

E. H., Jr., of B., in the State of N. Y., and a citizen of the State of N. Y., brings his supplemental bill against C. W. W., of said Massachusetts.

And thereupon your orator complains and says, that he filed his original bill against the defendants in this Court, August 9, 1859, wherein he prayed for a discovery, account, payment of profits, and an injunction to restrain the said defendants from infringing on your orator's patent, granted to him by the United States of America, for improvement in sewing machines, dated September 10, 1846 ; and for other relief, as stated in his said original bill.

And your orator further shows, that since the filing of his said original bill, namely, on the eighth day of September, in the year eighteen hundred and sixty, upon the application of your orator, and after due proceedings had in all respects as required by law, the Commissioner of Patents granted the extension of said patent for the term of seven years from and after the expiration of the first term thereof, viz., the tenth day of September, 1860, and made a certificate of such extension thereon, and entered the same on record in the Patent Office in due form of law ; and thereupon the said patent was renewed and extended, and now has the same effect in Law as though it had been originally granted for the term of twenty-one years, as in and by said certificate or a certified copy thereof here in Court to be produced, will more fully appear. Yet the said defendant, well knowing the premises, but contriving how to injure your orator, and without his consent or allowance, and without right and in violation of said letters patent and your orator's exclusive rights, secured to him as aforesaid, from September 1, 1857, has made, used, or vended, and still does make, use, or vend to others to be used in said district and in other parts of the United States, a large number of sewing machines, but how many your orator cannot state, but prays that the defendant may discover and set forth, each embracing substantially the improvement in sewing machines, or a material part thereof, patented by your orator as aforesaid, and thereby the said defendant has infringed, and still does infringe, and cause your orator to fear that in future he will infringe upon the exclusive rights and privileges intended to be secured to your orator in and by his said letters patent.

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief herein and in his said
* 2050 original * bill prayed ; and may, under oath and according to his best and utmost knowledge, remembrance, information, or belief, full, true, direct, and perfect answer make to all and singular the premises, and more especially may answer, discover, and set forth, whether

during any and what period of time since September 1, 1857, and where he has made, used, or vended to others to be used; for any and what consideration, any, and how many sewing machines; and whether or not the same embraced the said improvement in sewing machines, or any substantial part thereof, patented to your orator as aforesaid, or how the same differed from your orator's said patent, if at all.

And that the said defendant may answer the premises, and may be decreed to account for and pay over to your orator all gains and profits realized from his unlawful making, using, or vending of sewing machines, embracing said improvement patented to and vested in your orator as aforesaid; and may be restrained, by an injunction to be issued out of this honorable Court, or by one of your honors, according to law in such case provided, from making, using, or vending any sewing machines embracing said improvement, or any substantial part thereof, patented to your orator as aforesaid, and that the infringing machines now in possession or under the control of the defendant, may be delivered up to your orator or be destroyed; and for such further and other relief in the premises as the nature of the case may require, and to your honors may seem meet.

May it please your honors, &c.

E. H., Jr.

J. G., for Plaintiff.

95. *Second supplemental bill in a patent cause, stating that since the filing the first supplemental bill, the patent had been surrendered, &c., and a new patent issued.*

To the Judges of the Circuit Court of the United States, for the District of Massachusetts.

In Equity.

E. H., Jr., of B., in the State of N. Y., and a citizen of the State of N. Y., brings this his second supplemental bill against C. W. W., of B., in the district of Massachusetts, sewing machine maker, and a citizen of the State of Massachusetts.

And thereupon your orator complains and says, that he filed his original bill against the said defendant, in this Court, August 9, 1859, and his first supplemental bill, November 5, 1860; wherein he prayed for a discovery, account, payment of profits, and an injunction to restrain the said defendant from infringing your orator's patent, granted to him by the United States of America, for improvement * in * 2051 sewing machines, dated September 10, 1846; and for other relief, as stated in his original and supplemental bill.

And your orator further shows, that since the filing of his said original bill, namely, on the eighth day of September, in the year eighteen hundred and sixty, upon the application of your orator, and after due proceedings had in all respects as required by law, the Commissioner of Patents granted the extension of said patent for the term of seven years from and after the expiration of the first term, viz., the

tenth day of September, 1860, and made a certificate of such extension thereon, and entered the same on record in the Patent Office in due form of law, and thereupon the said patent was renewed and extended, and now has the same effect in law as though it had been originally granted for the term of twenty-one years, as in and by said certificate, or certified copy thereof, here in Court to be produced, will more fully appear, and thereupon his first supplemental bill was filed as aforesaid.

And your orator further shows, that since the filing of his said first supplemental bill, namely, on the nineteenth day of March, in the year eighteen hundred and sixty-one, his aforesaid patent having been surrendered and cancelled on account of a defective specification, a new patent was duly issued to him for the same invention, in accordance with his corrected description and specification, whereby was granted and secured to your orator, his heirs, administrators, or assigns, for said term of twenty-one years from September 10, 1846, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement in sewing machines therein specified and claimed, as in and by said reissued letters patent, or a certified copy thereof, here in Court to be produced, will more fully appear.

And your orator further shows, that since the extension of his said patent, he has himself become a manufacturer of sewing machines, and has licensed many other parties to manufacture and sell sewing machines, embracing his said patented invention; and that your orator and his licensees have made very large investments for the purpose of fully supplying the market with the best sewing machines, and that the continued infringement of your orator's said patent, committed by the defendant, has caused and is still causing irreparable injury to your orator's said rights and business, and to the investments and business of your orator's licensees under his said patent; yet the said defendant, well knowing the premises, but contriving how to injure your orator and without his consent or allowance, and without right, and in violation of said letters patent, and your orator's exclusive rights, secured to him as aforesaid, has continued since the reissue aforesaid, as well as up to that time, to make and vend, and still does make and

* 2052 vend to others to be used in said district and in other parts * of the United States, a large number of sewing machines, but how many your orator cannot state, but prays that the defendant may discover and set forth each, embracing substantially the improvement in sewing machines, or a material part thereof, patented to your orator as aforesaid, and thereby the said defendant has infringed, and still does infringe, and cause your orator to fear that in future he will infringe upon the exclusive rights and privileges intended to be secured to your orator in and by his said letters patent.

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief herein and in his said original bill prayed, and may, under oath, and according to his best and utmost knowledge, remembrance, information, or belief, full, true, direct, and perfect answer make to all and singular the premises, and

more especially may answer, discover, and set forth, whether during any and what period of time, since September 1, 1857, and where, he has made, used, or vended to others to be used, for any and what consideration, any, and how many, sewing machines, and whether or not the same embraced the said improvement in sewing machines or any substantial part thereof, patented to your orator as aforesaid, or how the same differed from your orator's said patent, if at all.

And that the said defendant may answer the premises, and may be decreed to account for and pay over to your orator all gains and profits realized from his unlawful making, using, or vending of sewing machines embracing said improvement patented to and vested in your orator as aforesaid; and may be restrained, by an injunction to be issued out of this honorable Court, or by one of your honors, according to law in such case provided, from making, using, or vending any sewing machines embracing said improvement, or any substantial part thereof, patented to your orator as aforesaid, and that the infringing machines, now in the possession or under the control of the defendant, may be delivered up to your orator or be destroyed; and for such further and other relief in the premises as the nature of the case may require, and to your honors may seem meet.

May it please your honor, &c.

E. H., Jr.

B. R. C., of Counsel with Plaintiff.

96. *Supplemental bill after a hearing before a single justice, and reservation for the full Court, to bring forward the fact of the termination of the partnership concerning which the original bill was brought.*

To the Honorable the Justices of the Supreme Judicial Court.

Humbly complaining, sheweth unto your honors the plaintiff A. M. K., of N., in the county of M., widow of D. M. K., late of said N., merchant; that the plaintiff did, on or about the twenty-first day of * May, A. D. 1861, exhibit her original bill of complaint * 2053: against W. B., of B., in the county of S., Esquire, G. G., of said N., Esquire, A. Moncrief K. and D. Malcolm K., also of said N., and minor children of the plaintiff and the said D. M. K., wherein the plaintiff prayed that the said defendants W. B. and G. G., and said minor children A. Moncrief K. and D. Malcolm K., by a guardian for this suit, which the plaintiff prayed the honorable Court to appoint, might, upon their several and respective corporal oaths, full, true, direct, and perfect answer make to all and singular the premises, as fully in every respect as if the same were there repeated, and they thereunto particularly interrogated, according to the best of their respective knowledge, information, and belief; and that it might be determined by the judgment of this honorable Court whether, under the will of the said D. M. K., the share of the net profits of the business of the firm of H., B., & T. belonging to the estate of the said D. M. K. was, and was to be taken, as part of the income, or as part of the prin-

cipal fund of the residue of the estate of said D. M. K.; and that if it should appear that such share of the net profits of said partnership business constituted and formed a part of the income of said residue, the aforesaid defendants W. B. and G. G., executors and trustees under said will, and their successors in said trust, might be ordered and decreed to account with the plaintiff for the profits of said partnership business, and to pay over to the plaintiff such a proportion thereof as she was entitled to, under the provisions of the will of said D. M. K.; and that the plaintiff might have such other and further relief as the nature of her case might require: and that a writ of *subpæna* might be directed to the said defendants, commanding them, and every of them, to appear before your honors in this honorable Court, then and there to answer to all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors should seem meet.

And the plaintiff further showeth, that, in accordance with the prayer of her bill, a guardian was duly appointed for the said minor children A. Moncrief K. and D. Malcolm K., to wit, H. D., Esquire, counsellor-at-law, and that said defendants having been served with process to appear, appeared accordingly, and put in their answers to the said bill of complaint, and thereupon the whole cause was set down for hearing upon the bill and answers; and thereafter, to wit, upon the third day of December, A. D. 1861, the same was heard before one of the Justices of this Court, the Honorable E. R. H., and was by said Justice reserved for the whole [full] Court; all of which, the foregoing, by the said bill and answers, and orders and decrees now remaining as of record in this honorable Court, fully appears.

And the plaintiff further showeth, by way of supplement, that since the filing of the said original bill, and since the putting in of the answers, and the making of the several orders and decrees afore-

* 2054 mentioned, * to wit, on the fourth day of September now current, the aforesaid limited partnership theretofore existing, under the name and firm of H., B., & T., has been dissolved and terminated, in accordance with the provisions of the written contract of partnership between the said H., B., & T. of the first part, and the said D. M. K. of the second part, bearing date of the fourth day of September, A. D. 1858, as by reference to a copy of said contract hereto annexed, and made a part hereof, more fully appears. And the plaintiff avers, that the said executors and trustees have received from said partnership business, as the share of the net profits thereof, belonging to the estate of the said D. M. K., a very large sum of money, to wit, eighty thousand dollars or thereabouts.

To the end, therefore, that the said defendants, W. B., G. G., and the said minor children, A. Moncrief K. and D. Malcolm K., by their said guardian H. D., may, upon their several and respective corporal oaths, full, true, direct, and perfect answer make to all and singular the premises, as fully, in every respect, as if the same were here repeated, and they thereunto particularly interrogated, according to the best of their respective knowledge, information, and belief; and that the plaintiff may have

the full benefit of her said suit and proceedings therein, against the above-named defendants, and may have the same relief against said defendants as the plaintiff might or could have had in case her original bill of complaint had been filed after the termination and dissolution of the limited partnership of H., B., & T., and after the receipt, by said trustees, of said sum of eighty thousand dollars; and that the plaintiff may have such other and further relief in the premises as to your honors shall seem meet. May it please your honors to grant unto the plaintiff a writ of *subpæna*, to be directed to the said W. B., G. G., and H. D., thereby commanding them, and every of them, at a certain day, and under a certain penalty therein to be specified, personally to appear before your honors in this honorable Court, and then and there to answer all and singular the premises, and to stand to, perform, and abide by such order and decree therein, as to your honors shall seem meet; and the plaintiff will ever pray.

A. M. K.

97. Supplemental bill to an original and amended bill filed by a lessee for the specific performance of an agreement to grant a further lease stating that the defendant has brought an ejectment against the plaintiff, and praying an injunction to restrain his proceeding at Law.¹

Humbly complaining, showeth unto your honors the plaintiff J. K., of, &c., that in or as of — term —, the plaintiff exhibited his * original bill of complaint in this honorable Court against * 2055 H. B. S., and which said bill has been amended by order of this honorable Court, thereby praying that the said defendant might be decreed specifically to perform his agreement with the plaintiff, touching the lease of the farm and premises in the said bill mentioned, and to grant the plaintiff a lease thereof for — years, commencing from the expiration of his former lease, at the yearly rent of \$ —, the plaintiff being ready and willing to do and perform everything on his part required to be done and performed in pursuance of the said agreement. And the plaintiff further showeth, that the said defendant appeared and put in his answer to the said original bill; as by the said bill and answer now remaining as of record in this honorable Court, reference being thereto had, will appear. And the plaintiff further showeth, by way of supplement, that since the filing of the said original bill the said defendant has caused an action of ejectment to be commenced in the — Court —, for the purpose of turning the plaintiff out of possession of the said farm and premises, and the said action is still depending in the said Court. And the plaintiff being advised that the said defendant cannot support such action, and that the plaintiff is entitled to a specific performance of the said agreement as prayed by his said amended bill, he has by himself and his agents several times applied to and requested the said defendant to desist from proceeding in the said action, and he was in hopes that he would have complied with such fair and reasonable requests, as in justice and equity he

¹ See ante, Vol. II. p. 1589, et seq.

ought to have done. But now so it is, &c., the said H. B. S. refuses, &c., and insists upon proceeding in said action, and to turn the plaintiff out of possession of the said farm and lands, to the manifest wrong and injury of the plaintiff in the premises. To the end, therefore, &c.

And that the said defendant may be restrained by the injunction of this honorable Court from proceeding in the said action, and from commencing any other action or proceeding at Law for the purpose of turning the plaintiff out of possession of the said farm and lands. May it please, &c.

[*Pray subpoena and injunction against H. B. S.*]

A. C.

Bills of Revivor.¹

98. *Bill of revivor (before decree) by the administrator of the plaintiff in the original suit, the executors in his will having renounced probate.*

Humbly complaining, sheweth unto your honors, the plaintiff C. D., of, &c., that J. A., late of, &c., but now deceased, on or about —, exhibited his original bill of complaint in this honorable Court against G. T. W., of, &c., as the defendant thereto, thereby stating, &c., praying, &c. [*here state the prayer*]. And the plaintiff further sheweth unto your honors, that the said defendant, having been duly served with process for that purpose, appeared and put in his answer to said bill, as in and by the said original bill, &c. And the plaintiff further sheweth, that some proceedings have been had before —, one of the masters of this Court, to whom this cause stands referred, but no general report has yet been made in the said cause; and that the said J. A. lately and on or about the — day of —, departed this life, having first made and published his last will and testament in writing, bearing date the — day of —, and a codicil thereto bearing date the — day of —, and thereby appointed M. C. and W. W. executors thereof. And the plaintiff further sheweth, that the said M. C. and W. W. have renounced probate of the said will and codicil of the said J. A., deceased, and decline to act in the trusts thereof, and that the plaintiff has obtained letters of administration with the will annexed of the goods, chattels, rights and credits of the said J. A., deceased, to be granted to him by and out of the proper Court, and has thereby become and now is his legal personal representative. And the plaintiff further sheweth, that the said suit and proceedings have become abated

¹ The necessity for bills of revivor is obviated to a considerable extent in England by the late acts of Parliament and orders in Chancery, providing a simpler mode of bringing cases abated again before the Court. See *ante*, Vol. II. p. 1506, *et seq.* Other modes of revivor are provided in Massachusetts, 25th Rule of Chancery; in Maine, 21st Rule of Chancery;

in New Hampshire, 28th Rule of Chancery. A petition by a defendant, containing sufficient averments for a bill of revivor, and praying that the cause be revived in the names of proper representatives of the deceased plaintiff, was treated as a bill of revivor, in *Reid v. Stuart*, 20 W. Va. 382.

by the death of the said J. A., and the plaintiff is, as he is advised, entitled to have the said suit and proceedings revived against the said defendant G. T. W., and the said accounts by the aforesaid order of reference directed, prosecuted, and carried on, and to have the said cause put in the same plight and condition as the same was in previously to the abatement thereof by the death of said J. A.

To the end, therefore, that the said defendant may answer the premises; and that the said suit and proceedings which so became abated * as aforesaid may stand revived, and be in the same * 2057 state and condition as the same were in at the time of the death of the said J. A., or that the defendant may show good cause to the contrary; May it please your honors to grant unto the plaintiff a writ of *subpæna* to revive [and answer], issuing out of and under the seal of this honorable Court, to be directed to the said G. T. W., thereby commanding him at a certain day and under a certain penalty, to be therein limited, personally to be and appear before your honors, in this honorable Court, then and there [to answer the premises and] to show cause, if he can, why the said suit, and the proceedings therein had, should not stand and be revived against him, and be in the same plight and condition as the same were in at the time of the abatement thereof: and further to stand to, and to abide, such order and decree in the premises as to your honors shall seem meet. And the plaintiff shall ever pray, &c. [*Where it is only necessary to pray a subpæna to revive, the words within brackets should be omitted.*]

99. *Bill of revivor on the marriage of a female plaintiff.*

Humbly complaining, show unto your honors, the plaintiffs, A. B., of, &c., and E. B. his wife, that on or about —, the said E. B., by her then name of E. M., exhibited her original bill of complaint in this honorable Court against — and W. M., as defendants thereto, thereby stating, &c., and praying, &c. [*state the prayer of the bill.*] And the plaintiffs further show, that the said several defendants being duly served with process, severally appeared and put in their answers to the said original bill; as in and by, &c. And the plaintiffs further show, that the said E. B. took several exceptions to the answer put in by the said defendant W. M. to the said original bill, and which said exceptions were, upon argument, allowed by the Master, to whom the same were referred. And the plaintiffs further show, that said E. B. afterwards obtained an order of this honorable Court to amend her said original bill, and that the said defendant W. M. might answer the said amendments at the same time that he answered the said exceptions. And the plaintiffs further show, that before the said W. M. had put in his answer to the said exceptions, or any further proceedings were had in the said suit, and on or about the — day of —, the said E. B. intermarried with said A. B., whereby the said suit and proceedings became abated. And the plaintiffs are advised that they are entitled to have the same revived, and to be put in the same plight and condition as the same were in at the time of the abatement thereof. To the end,

therefore, that the said suit and proceedings, which so became abated as aforesaid, may stand revived, and be in the same plight and condition as the same were in at the time of such abatement, or that

* 2058 * the said defendants may show good cause to the contrary ; May it please your honors to grant unto the plaintiffs a writ of *subpœna* to revive, issuing out of, and under the seal of this honorable Court, to be directed to the said W. M., thereby commanding him, at a certain day, and under a certain penalty to be therein inserted, personally to be and appear before your honors in this honorable Court, then and there to answer and show cause, if he can, why the said suit, and the proceedings therein had, should not stand and be revived against him, and be in the same plight and condition as the same were in at the time of the abatement thereof and further to stand to and abide such order and decree in the premises, as to your honors shall seem meet.

And the plaintiffs will ever pray, &c.

100. *Bill of revivor and supplement, in a case which was considered as not falling within either of sections 52 and 53 of 15 and 16 Vic. c. 86. [Modern English Form.]*

M. S., H. S., and E. S., infants, by A. B., } Plaintiffs,
their next friend and

S. D. and F. D., his wife, R. B. and E. B., } Defendants.
his wife, R. J. B., J. S., J. B., A. S.,
and L. A.

Bill of Revivor and Supplement.

To, &c.

Humbly complaining, &c.

1. [Original bill filed by two defendants, the feme covert, then both unmarried and infants, and the plaintiffs in the supplemental suit against the defendants J. S., A. S., and L. A., stating will of C. D., devising real estates to L. A. and other trustees (deceased), under which the children of the testator's son, the plaintiffs in the original cause, and the defendant J. S., and also the defendant A. S., took beneficial interests, and praying the execution of the trusts of the will.]

2. [Appearance of the defendants to original bill.]

3. Divers proceedings and orders have since been taken and made respectively in said original suit.

4. The above-named defendant F. D., then F. S., attained the age of twenty-one years on the, &c., and on the, &c., she intermarried with and became the wife of the defendant S. D., and the said suit thereby became abated.

And by way of supplement the above-named plaintiffs show as follows :—

* 2059 * 5. No settlement affecting the share or interest of the above-named defendant F. D. in the said real estates has ever been made.

6. By an order made by his honor, &c., on, &c., it was ordered that upon producing to the registrar an office copy of an affidavit, proving the due execution by all parties of a deed in exact conformity with the draft articles for a settlement in the order mentioned, the defendant E. B., then E. S., and the defendant R. B. should be at liberty to intermarry.

7. [Articles for settlement accordingly, of which J. S. and J. B. are trustees, and by which defendant R. B. covenanted to settle his intended wife's share in the estates, upon trust for her separate use for life, with remainder for the benefit of their children. The trusts are shortly stated.]

8. The marriage between the defendants R. B. and E. B. his wife, was duly solemnized, and the said A. B. has since attained the age of twenty-one years.

9. There has been issue of the last-mentioned marriage, one child only; viz., the above-named defendant R. J. B.

10. Under the circumstances aforesaid, the said original suit and proceedings have become defective as well as abated, and the above-named plaintiffs are desirous that the same should be revived, and should be carried on and prosecuted between the parties to this suit, in manner hereinafter prayed.

Prayer.

The plaintiffs pray as follows:—

1. That the said suit, orders, and proceedings may stand revived, and be in the same plight and condition that the same would have been in if the same had not become abated, and that this suit, so far as may be necessary or proper, may be deemed and taken to be supplemental to the said original suit as revived; and that the order and proceedings in said last-mentioned suit may be carried on and prosecuted between the parties to this suit, in the like manner as between the parties to said original suit as revived.¹

2. [General relief.]

Names of defendants.

The defendants, &c.

¹ In the case in the text it was considered that a supplemental bill was necessary, and that it did not fall under §§ 52, 53, of the 15 & 16 Vic. c. 86, or either of them. The cases, however, upon the subject are not satisfactory. In the following cases where there was a transmission of interest, the fifty-second section has been held to apply. Atkinson v. Parker, 2 De G. M. & G. 221; Fullerton v. Martin, 1 Drew. 228; Lash v. Miller, 4 De G. M. & G. 841;

Pickford v. Brown, 1 Kay & J. 643; Hall v. Clive, 20 Beav. 575; Notley v. Palmer, 1 Jur. N. S. 221, V. C. K. In Jebb v. Tugwell, 24 L. J. Ch. 670, the Master of the Rolls ordered that an infant, who was born pending the suit and had not been brought before the Court by supplemental bill or otherwise, should be bound by the decree. And see the earlier cases of Petre v. Petre, 1 W. R. 362; Morritt v. Walton, 2 W. R. 544; Hart v. Tulk, id. 131.

* 2060 * 101. *Bill of revivor and supplement, another form. [Modern English Form.]*

Between W. L. and C. C., his wife . . . Plaintiffs,
and
W. R., A. S., and others . . . Defendants.

[The bill¹ stated the will of the testator, appointing the defendants W. R. and J. S., deceased, executors, and contained statements as to legatees, and the deaths of several of them. It also stated the filing of the original bill by some of the legatees against the executors and residuary legatees, and a decree directing the usual accounts of the estate of the testator, with class and other inquiries. The bill then alleged that the decree had been carried into the Master's office; that certain accounts had been taken, but no report had been made.]

"The plaintiffs further state, by way of supplement," &c. [The bill then stated the deaths of the plaintiffs, and of several of the defendants, including J. S., one of the executors.] "The said suit having become abated in manner aforesaid, no proceedings have been taken to revive the same."

[The bill then set forth facts and circumstances for the purpose of charging the surviving executor, and the estate of the deceased executor represented by the defendant A. S., with wilful default, and of declaring certain purchases made by the surviving executor of portions of the testator's estate void, and the bill also contains the following general charge :—]

The defendant W. R., and the said J. S., also, in many other respects, wasted and mismanaged the said testator's estate, and thereby occasioned very considerable loss thereto; and they have neglected to call in and receive various parts of such estate, and have allowed the same to remain outstanding upon insufficient security,² and have also retained large balances from time to time in their hands, without investing the same.

The plaintiffs have never received anything on account of the legacy bequeathed to the plaintiff C. L., by the said will, or in respect of any part of the residuary estate of the said testator, although, from time to time, since the abatement of said suit, they have made frequent applications to the defendant W. R. for an account of the real and personal estate of the said testator, and for payment of what was due to them in respect thereof.

¹ Leggo v. Richards, V. C. Kindersley, 20th January, 1857, MSS. It is to be observed, that in this case the supplemental bill was filed by one of the defendants to the original bill and her husband, and was therefore sustainable, and not open to the objection (as it would have been if the plaintiff in the original suit had filed it), that, on the ground of the further relief sought, it was a supplemental bill in the nature of a bill of review, which cannot be filed without the leave of Court. Berrow v.

Morris, 10 Beav. 437; Hodson v. Ball, 11 Sim. 456; Taylor v. Taylor, 1 M. & G. 397.

A supplemental bill after decree should be in aid of the directions contained in the decree on the original suit. Wilson v. Todd, 1 M. & C. 42, 47.

² Caney v. Bond, 6 Beav. 436; Ratcliffe v. Winch, 17 Beav. 217; Buxton v. Buxton, 1 M. & C. 80; Hughes v. Empson, 22 Beav. 181; Bate v. Hooper, 5 De G. M. & G. 338.

The defendants W. R. and J. S. purchased or procured, to be transferred into their joint names, various large sums of bank annuities, forming a part of the testator's estate, a considerable part of which has been since sold out by the said W. R., and applied for purposes not sanctioned by the said testator's said will, and the defendant W. R. threatens and intends to sell out and apply, in like manner, the remainder of bank annuities.

Prayer.

The plaintiffs therefore pray as follows:—

Prayer to revive.] 1. That the said suit and proceedings which so became abated as aforesaid may stand and be revived, and be in the same plight and condition as the same were in at the time of the abatement thereof.

2. That the said decree made on the hearing of the said cause may be prosecuted and carried into effect, and that the plaintiffs may have the full benefit thereof.

3. That an account may be directed by this honorable Court of all the personal estate of the said testator, which would, but for the wilful neglect or default¹ of the said W. R. and J. S., or either of them, have come to their or either of their hands.

4. That the purchases² hereinbefore mentioned to have been made by the defendant W. R., of the said freehold and leasehold premises at —, may be declared to be void and of no effect; or that the said W. R. and J. S. may be declared bound to make good to the said testator's estate the full present value of such premises, and that all proper and necessary directions may be given, and inquiries made, to give effect to such declaration.

5. That in taking the account by the said decree, and hereinafter sought to be taken, the said W. R. and J. S. may be disallowed all costs, charges, and expenses incurred by them, or either of them, in consequence of their not having duly converted and invested the said testator's estate, pursuant to the directions of the said testator's will.

* 6. That the defendant A. S. may admit assets of the said J. S. sufficient to meet what shall be found due from the said J. S., upon taking the said several accounts, or that all proper and necessary accounts may be taken of the personal estate and effects of the said J. S.

¹ The plaintiff should charge wilful default in the bill, and establish a *prima facie* case thereof at the hearing. *Shepherd v. Towgood*, Turn. & R. 379; *Garland v. Littlewood*, 1 Beav. 527. And the decree should either contain some declaration, or direct some inquiries with a view to determining the question as to the wilful default of the accounting party; otherwise the question will not be open on the cause coming on for further consideration. *Jones v. Morrall*, 2 Sim. N. S. 241; 21 L. J. Ch. 630. As to charging executor with interest, see Att.-

Gen. v. Alford, 4 De G. M. & G. 843. As a general rule, an executor is not justified in carrying on the testator's trade except for purposes of winding up. *Collinson v. Lister*, 20 Beav. 356; 24 L. J. 762; 25 L. J. Ch. 38.

² See form of decree where a trustee purchases a trust estate at an alleged undervalue, and claims the benefit of permanent improvements. *Williamson v. Seaber*, 3 Y. & C. Exch. 717. For instructions to Master in such a case, see *Boynton v. Brastow*, 53 Maine, 367, 368.

7. That some proper person may be appointed to get in and receive the outstanding personal estate and effects of the said testator, with all proper and necessary directions in that behalf; and that the defendant W. R., his servants and agents, may be restrained, by the order and injunction of this honorable Court, from getting in and receiving any part thereof, and from selling out, parting with, or disposing of, except under the sanction of this Court, any part of the bank annuities now standing in his name as aforesaid, in the books of the Governor and Company of the Bank of England.

8. That, for the several purposes aforesaid, all necessary accounts may be taken, directions given, and inquiries made.

102. *Bill of revivor and supplement by the executors of the deceased plaintiff in the original bill against the administratrix and heiress-at-law of the deceased defendant, against whom the original bill had been exhibited for a foreclosure of a mortgage of freehold and leasehold property.*

To, &c.

Humbly complaining, show unto your honors the plaintiffs R. W., of, &c., and N. W., of, &c., executors, named and appointed in and by the last will and testament of H. W., late of, &c., gent., deceased, that, on or about the — day of —, the said H. W. exhibited his bill of complaint in this honorable Court against T. W., late of, &c., gent., deceased, thereby praying that the said T. W. might be decreed by this honorable Court to come to a just and fair account with the said H. W. for the principal and interest then due and owing to him on the mortgage security, in the said bill mentioned, and might pay the same to the said H. W. by a short day to be appointed by this honorable Court, together with his costs; and in default thereof, that the said T. W. might stand absolutely barred and foreclosed of and from all manner of benefit and advantage of redemption or claim in or to the residue of two several terms of five hundred years and four hundred years in the respective mortgaged premises in the said bill mentioned, and every part thereof. And the said defendant T. W. being duly served with process, appeared thereto, and departed this life on or about the — day of —, without having put in his answer to the said bill. And the plaintiffs show unto your honors, by way of supplement to the said original bill, that the said defendant T. W.

departed this life intestate, leaving his wife, E. W., a defendant * 2063 ant * hereinafter named, *enceinte* with a child since born and

named A. W., and the said A. W. is now the sole heiress-at-law of the said T. W., deceased, and as such is entitled to the reversion and remainder of the freehold part of the said mortgaged hereditaments and premises, expectant upon the determination of the said term of five hundred years therein. And the plaintiffs further show, that on the — day of —, letters of administration of the goods, chattels, and effects of the said T. W., deceased, were duly granted unto his widow, the said E. W., who is thereby become his sole personal representa-

tive. And the plaintiffs show unto your honors that the said complainant H. W. departed this life on or about the — day of —, having previously duly made and published his last will and testament in writing, bearing date on or about the — day of —, and thereof appointed the plaintiffs joint executors, and on or about the — day of — the plaintiffs duly proved the said will in the proper Court, and took upon themselves the burden of the execution thereof. And the plaintiffs further show, that upon the death of the said H. W., the said several terms of five hundred years and four hundred years became, and the same are now, vested absolutely at law in the plaintiffs, as his personal representatives, subject, nevertheless, to redemption on payment of the principal money and interest thereby secured. And the plaintiffs further show unto your honors, that the said suit having become abated by the death of said T. W., the plaintiffs are advised that they, as the personal representatives of the said H. W., deceased, are entitled to have the same revived and restored as against the said E. W. and A. W., to the same plight and condition in which it was at the time of the death of the said T. W., and to have the same relief against the said E. W. and A. W. To THE END, therefore, &c.

And that the said E. W. and A. W. may answer the said original bill, and that they may be decreed by this honorable Court to come to a just and fair account with the plaintiffs for the principal and interest now due and owing to the plaintiffs on the said mortgage securities, and may pay the same to the plaintiffs by a short day to be appointed by this honorable Court, together with the plaintiffs' costs, &c., &c., and that the said suit may stand and be revived against the said defendants, and be in the same plight and condition in which the same was at the time of the decease of the said defendant T. W., or that the said E. W. and A. W. respectively may show good cause to the contrary; May it please, &c.

Pray subpoena to revive and answer the original bill and supplemental bill against E. W. and A. W.

* Supplemental Statement.

* 2064

In Chancery.

Between, &c.

[Title of original cause.]

Supplemental statement to be added to the original bill in this cause.

[Here state the facts or circumstances which have occurred since the filing of the bill, and which the plaintiff is desirous of putting in issue.¹

¹ It is to be borne in mind, that if the plaintiff is entitled to amend his bill, it will not be necessary to file a supplemental bill, to put in issue any facts or circumstances which may have occurred after the institution of the suit; but they may be introduced by amendment; a

supplemental statement, therefore, is only necessary where the cause is in such a state that the plaintiff is not at liberty to amend his bill. *Ante*, Vol. II. pp. 1530, 1531; see *Peabody v. Norfolk*, 98 Mass. 452.

SECTION XXXII.

*Bills of Review.²*103. *Bill of review for errors of law, apparent on the decree itself.*

To, &c.

Humbly complaining, sheweth unto your honors the plaintiff A. B., of, &c., that on the — day of —, W. S., of, &c., the defendant hereinafter named, exhibited his bill of complaint in this honorable Court against the plaintiff, and thereby set forth that, &c. [*here insert the original bill*]. And the plaintiff being served with the proper process for that purpose, appeared and put in his answer to the said bill, to the effect following [*here recite the substance of answer*]. And the said W. S. replied to the said answer, and issue having been joined, and witnesses examined, and the proofs closed [*or, the said W. S. joined issue on the answer and*], the said cause was set down to be heard, and was heard, before your honors, on the — day of —, when a decree was pronounced, which was afterwards passed, and entered, in which it was set forth and recited, that it was, at the hearing on the plaintiff's behalf, insisted that the plaintiff had, by his answer, set forth that, &c. [*here insert the recital and decree*]. And the said decree has since, and on or about the — day of —, been duly signed and enrolled; which said decree the plaintiff insists is erroneous, and ought to be reviewed, reversed, and set aside for many apparent errors and imperfections, inasmuch as it appears by

* 2065 * the plaintiff's answer, set forth in the body of said decree [*here insert the apparent errors*]. And no proof being made thereof, no decree ought to have been made or grounded thereon, but the said bill ought to have been dismissed for the reasons aforesaid. In consideration whereof, and inasmuch as such errors and imperfections appear in the body of the said decree, and there is no proof on which to ground any decree to set aside the said rent-charge, the plaintiff hopes that the said decree will be reversed and set aside, and no further proceedings had thereon. To THE END, therefore, that the said W. S., &c.; and that for the reasons and under the circumstances aforesaid, the said decree may be reviewed, reversed, set aside, and no further proceedings taken thereon, and the plaintiff permitted to remain in the undisturbed possession and enjoyment of the said rent-charge.

May it please, &c.

[*Pray for subpoena in usual form.*]

² The Chancery jurisdiction to entertain a suit in the nature of a bill of review is not affected by the Judicature Acts, although leave to bring such a suit is now more usually ob-

tained by summons than by petition. Falcke v. Scottish Imperial Ins. Co. (No. 2), 37 L. T. 39; 35 W. R. 794.

104. *Bill of review on discovery of new matter.*

Humbly complaining, sheweth unto your honors the plaintiff A. B., of, &c., that on or about —, C. D., of, &c., the defendant hereinafter named, exhibited his bill of complaint in this honorable Court against the plaintiff, and thereby set forth that, &c. [*Here insert the original bill.*] And the plaintiff being duly served with process for that purpose, appeared and put in his answer to the said bill, to the effect following: [*Here state the substance of the answer.*] And the said C. D. replied to the said answer, and issue having been joined and witnesses examined, and the proofs closed [or, the said C. D. joined issue on the answer, and], the said cause was set down to be heard, and was heard before your honors, on the — day of —, when a decree was pronounced, whereby your honors decreed that the plaintiff's title to the premises was valid and effectual, after which the said C. D. petitioned your honors for a rehearing, and the said cause was accordingly re-heard, and a decree of reversal made by your honors on the ground of the said C. D. being the heir-at-law of the said E. F., deceased, and which said decree of reversal was afterwards duly signed and enrolled, as by the said decree and other proceedings now remaining filed as of record in this honorable Court, reference being thereto had, will appear. And the plaintiff sheweth unto your honors, by leave of this honorable Court first had and obtained for that purpose, by way of supplement, that since the signing of the said decree of reversal, the plaintiff has discovered, as the fact is, that the said E. F. was, in his lifetime, seised in his demesne as of fee, of and in the hereditaments and premises in question in the said cause, and * that * 2066 the said E. F., while so seised, and when of sound mind, duly made and published his last will and testament in writing, bearing date on the — day of —, which was executed by him, and attested according to law, and thereby gave and devised unto the said J. W., his heirs and assigns forever, to and for his and their own absolute use and benefit, the said hereditaments and premises in question in the said cause (to which the plaintiff claims to be entitled as purchaser thereof from the said J. W.). And the plaintiff further sheweth unto your honors, that since the said decree of reversal was so made, signed, and enrolled, as aforesaid, and on or about —, the said C. D. departed this life intestate, leaving G. H., of, &c. (the defendant hereinafter named), his heir-at-law, who, as such, claims to be entitled to the said hereditaments and premises in exclusion of the plaintiff. And the plaintiff is advised and insists that, under the aforesaid circumstances, the said last-mentioned decree, in consequence of the discovery of such new matter as aforesaid, ought to be reviewed and reversed; and that the first decree, declaring the plaintiff entitled to the said hereditaments and premises, should stand, and be established and confirmed; and for effectuating the same, the said several proceedings, which became abated by the death of the said C. D., should stand and be revived against the said G. H., as his heir-at-law.

To THE END, therefore, &c. And that the said suit may be revived against the said G. H., or that he may show good cause to the contrary, and that the said last decree, and all proceedings thereon, may be reviewed and reversed, and that the said first-mentioned decree may stand and be established and confirmed, and be added to, by the said will being declared a good and effectual devise of such hereditaments and premises, as aforesaid; and that the said G. H. may be decreed to put the plaintiff into possession of the said hereditaments and premises, and in the same situation, in every respect, as far as circumstances will now permit, as the plaintiff would have been in case such last decree had never been pronounced and executed; and that the plaintiff may have such other, &c. May it please, &c.

[*Pray subpoena to revive and answer against the said G. H.*]

Bill in the Nature of a Bill of Review, where a Party is bound by a Decree.

105. Supplemental bill in the nature of a bill of review. [Commence as in preceding.]

Whereby your honors decreed that, &c. [*state the effect of the decree*], as by the said proceedings and decree now remaining as of record, in this honorable Court, reference being thereunto had, will appear. And the plaintiff further sheweth unto your honors [*state the supplemental matter, by leave of the Court, &c.*] that the said decree has never hitherto been signed and enrolled, and in consequence of the discovery of such new matter as aforesaid, the plaintiff is entitled, as he is advised, to have the said cause heard thereon by your honors, when reheard on the said original bill (a petition for that purpose having been presented by the plaintiff, and acceded to by your Lordships) in the same manner as if such new matter had been put in issue in the said original suit. To the end, therefore, &c. [*Interrogate as to supplemental matters.*]

And that the said will may be established, and declared a valid and effectual devise of the said hereditaments and premises, and that the said cause may be heard on such new and supplemental matter as aforesaid, at the same time that it is reheard on the said original bill; and that the plaintiff may have such further and other relief as, under the circumstances hereinbefore particularly mentioned to your honors, shall seem meet, and the nature of this case, as it hereby appears, may require. May it please, &c.

SECTION XXXIV.

Bill to suspend a Decree.

106. *To enlarge the time of performance of a decree on the ground of inevitable necessity, which prevented a party from complying with the strict terms of it.*

Humbly complaining, showeth unto your honors the plaintiff A. B., of, &c., that the plaintiff, on the — day of —, borrowed the sum of £— from C. D., of, &c., the defendant hereinafter named, and in order to secure to the said C. D: the repayment thereof, with legal interest, the plaintiff, by an indenture, bearing date the — day of — [set forth the mortgage], bargained, sold, and conveyed unto the said C. D. the real estate named and described in the said indenture, subject to redemption, on payment by the plaintiff of the said sum of £— and * interest, as therein mentioned, as by the said inden- * 2068 ture, reference thereto being had, will more fully appear. And the plaintiff further showeth, that the said C. D., on or about —, exhibited his bill of complaint to this honorable Court against the plaintiff, for payment of what was then due to him for principal and interest on the said security, by a short day to be appointed for that purpose, or that the plaintiff might be absolutely debarred and foreclosed from all right and equity of redemption in the said mortgaged premises; and the plaintiff having put in his answer thereto, and submitted to pay what should appear to be due from him, the said cause came on to be heard before this honorable Court, on or about —, when it was referred to R. V., one of the Masters of this honorable Court, to take an account of what was so due from the plaintiff to the said C. D., as aforesaid, and the plaintiff was ordered to pay the same on the — day of —, or to be absolutely foreclosed of all right and equity of redemption in the said mortgaged premises, as by the said proceedings now remaining as of record in this honorable Court, reference being thereto had, will appear. And the plaintiff further showeth unto your honors, that the plaintiff was duly prepared, and was ready to pay what should be reported to be due from him; but, before the said Master made his report, the plaintiff was sent, in great haste, by the commands of his Majesty, Ambassador to the Court of Paris, on special and weighty affairs of State, which admitted of no delay; and the plaintiff was, therefore, unable to make any provision for the payment of what should be so found due from him as aforesaid. And the plaintiff further showeth unto your honors, that the said Master, during the plaintiff's absence, made his report, whereby he found that the sum of £— was due to the said C. D. for principal and interest from the plaintiff, but no further proceedings have since been taken in the said cause. And the plaintiff being ready and willing to pay the said sum of £— to the said C. D., and all subsequent interest thereon, is advised, that, on payment thereof, he is entitled, under the circumstances aforesaid, to have so much of the said decree as relates to the foreclosure of the

plaintiff's right and equity of redemption in the said mortgaged premises, suspended, and on payment thereof, to have a reconveyance of the said mortgaged premises from the said C. D., &c. To THE END, therefore, &c. And that the subsequent interest on the said sum of £—, so reported to be due from the plaintiff, as aforesaid, to the present time, may be computed by the direction of this honorable Court, and that on the payment of the said sum of £—, and such interest as aforesaid, the said decree of foreclosure may be suspended, and the said C. D. directed, at the expense of the plaintiff, to reconvey the said mortgaged premises to the plaintiff, or as he shall appoint, freed and absolutely discharged from the said mortgage. [And for further relief.] May it please, &c.

*Bill to set aside a Decree obtained by Fraud.¹*107. *Bill to set aside a decree of foreclosure fraudulently obtained, and for redemption.*

Humbly complaining, showeth unto your honors the plaintiff A. B., of, &c., that T. B., of, &c., deceased, the plaintiff's late father, during his life, and on or about the — day of —, was seised in his demesne, as of fee, of and in the real estate hereinafter particularly described; and by indenture of that date, made between the said T. B. of the one part, and C. D., of, &c., the defendant hereinafter named, of the other part, the said T. B., in consideration of \$—, bargained, sold, and conveyed unto the said T. B., his heirs and assigns, all, &c. [describe the mortgaged premises], subject to redemption on payment of the said principal money and lawful interest at the time therein mentioned, and long since past; as by the said indenture, reference being thereto had, will more fully appear. And the plaintiff further showeth, that the said T. B. departed this life on or about —, leaving the plaintiff his heir-at-law, and only child, then an infant under twenty-one years of age; that is to say, of the age of seven years or thereabouts, him surviving. And the plaintiff further showeth, that during the plaintiff's minority, on or about —, the said C. D. filed his bill of complaint in this honorable Court against the plaintiff, for a foreclosure of the plaintiff's right and equity of redemption in the said mortgaged premises; but the plaintiff was not represented in such bill

¹ See Patch v. Ward, L. R. 8 Ch. 203. A bill to annul a decree obtained by fraud ought, ordinarily, by analogy with the period fixed by statute for the suing out of writs of review as of right, or the filing of petitions for review of judgments in civil actions, to be filed within one year from the discovery of the fraud. Evans v. Bacon, 99 Mass. 213. A plaintiff in a bill to redeem land, who on discovering upon the docket the entry of a decree dismissing

his bill, files a petition to annul it, which, after a hearing of the parties, is denied, cannot maintain a bill, which he delays, without explanation, to file until two years and four months afterwards, to set aside the decree on the ground that it was obtained by fraud, but must be deemed to have waived his rights in that respect, although it does not appear that his petition was not dismissed for mere defect of form. Evans v. Bacon, *supra*.

to be then an infant; and the said C. D. caused and procured one L. M., since deceased, who acted in the management of the affairs of the plaintiff's said father, to put in an answer in the name of the plaintiff, and without ever acquainting the plaintiff, or any of his friends or relations therewith; in which said answer a much greater sum was stated to be due from the plaintiff, on the said mortgage security, to the said C. D., than in fact was really owing to him, and for which it was untruly stated that the said mortgaged premises were an insufficient security: and in consequence of such answer being put in, the said C. D. afterwards, in conjunction with the said L. M., on or about —, obtained an absolute decree of * foreclosure * 2070 against the plaintiff, which the plaintiff has only lately discovered, and of which the plaintiff had no notice, and in which said decree no day is given to the plaintiff, who was an infant when the same was pronounced, to show cause against it when he came of age; as by the said proceedings, now remaining as of record in this honorable Court, reference thereto being had, will more fully appear. And the plaintiff further shows that the plaintiff, on the — day of — last, attained the age of twenty-one years, and shortly afterwards, having discovered that such transactions had taken place during his minority as aforesaid, by himself and his agents, represented the same to the said C. D., and requested him to deliver up possession of the said mortgaged premises to the plaintiff, on being paid the principal money and interest, if any, actually and fairly due thereon, which the plaintiff offered, and has at all times been ready to pay, and which would have been paid by the personal representatives of the said T. B., out of his personal assets, during the plaintiff's minority, had any application been made for that purpose. And the plaintiff hoped that the said C. D. would not have insisted on the said decree of foreclosure, so fraudulently obtained as aforesaid, but would have permitted the plaintiff to redeem the said mortgaged premises, as he ought to have done. BUT NOW SO IT IS, &c., the said C. D., &c., pretends that the said decree of foreclosure was fairly and properly obtained, and that a day was therein given to the plaintiff, when of age, to show cause against the same, and that the plaintiff has neglected to do so, and that the plaintiff is neither entitled to redeem, nor to travel into the said accounts; whereas the plaintiff charges the contrary thereof to be true, and that the plaintiff only attained the age of twenty-one years on the said — day of —, and that he has since discovered the several matters aforesaid, by searching in the proper offices of this honorable Court; and the plaintiff expressly charges that, under the circumstances aforesaid, the said decree, so fraudulently obtained, as hereinbefore mentioned, ought to be set aside, and the plaintiff ought not to be precluded thereby, or in any other manner, from redeeming the said mortgaged premises, of which the said C. D. has possessed himself, by such means as aforesaid. All which actings, &c. In consideration whereof, &c. To the end, &c.; and that the said decree of foreclosure may, for the reasons and under the circumstances aforesaid, be set aside by this honorable Court, and declared to

be fraudulent and void; and that an account may be taken of what, if anything, is now due to the said C. D. for principal and interest on the said mortgage; and that an account may also be taken of the rents and profits of the said mortgaged premises, which have, or without his wilful default might have been, received by or on behalf of the said C. D., and if the same shall appear to have been more than the principal and interest due on the said mortgage, then that the residue thereof may be paid over to the plaintiff, and that the plaintiff * 2071 may be at liberty * to redeem the said mortgaged premises, on payment of the principal and interest, if any, remaining due on the said security; and that the said C. D. may be decreed, on being paid such principal money and interest, to deliver up possession of the said mortgaged premises, free from all incumbrances, to the plaintiff, or as he shall appoint, and to deliver up all title-deeds and writings relating thereto. [General relief.] May it please, &c. [Prayer for subpoena against C. D., &c.)]

SECTION XXXVI.

Bill in the Nature of a Bill of Revivor.

108. *Where there has been a devise of real estate, against a vendee for the specific performance of an agreement.*

The plaintiff A. B., of, &c. That the plaintiff, on or about —, filed his bill of complaint in this honorable Court against C.D., of, &c., thereby stating [see form of specific performance of an agreement]. [Set forth the material part of the bill and the prayer.] That the said C. D. being served with process of subpoena, appeared to the said bill, but before he put in his answer thereto, he, the said C. D., departed this life, having first, when of sound mind, duly made and published his last will and testament in writing (which was executed by him, and attested as by law is required for passing real estates by devises), and thereby gave and devised all his real estates (comprising the estate so agreed to be sold by him to the plaintiff as aforesaid) to E. F., of, &c. (the defendant hereinafter named), his heirs and assigns forever, as by the said will, reference being thereunto had, will appear. And the plaintiff further showeth unto your honors, that the said suit became abated by the death of the said C. D.; but, notwithstanding, the plaintiff is advised that he is entitled to have the said agreement specifically performed by the said E. F. as such devisee as aforesaid; and which said devise the plaintiff expressly charges is in every respect valid and effectual: To the end, therefore, &c. And that the plaintiff, under the circumstances aforesaid, may have all such benefit against the said E. F. of the said suit, so commenced as aforesaid, as he would have had in case the said C. D. had been living, or that the said E. F. may show good cause to the contrary. May it please, &c. [Subpoena.]

* SECTION XXXVII.

* 2072

*Bill to carry a Decree into Execution.¹*109. *Where a decree of partition has been obtained and not executed.*

Humbly complaining, sheweth unto your honors the plaintiff A. B., of, &c., that the plaintiff, on or about the — day of —, filed his bill of complaint in this honorable Court against E. B., stating [*set out substance of a bill for partition*] and praying [*set out prayer verbatim*]. And the plaintiff further sheweth, that due process having been served upon the said E. B., he appeared and put in his answer to said bill, to which answer a replication was filed [*or, on which answer issue was joined*]. And the said cause being duly at issue, the same came on to be heard, and was heard, before your honors on the — day of —, when your honors were pleased to order and decree that a commission should issue to certain commissioners to be therein named, to make partition of the estate in question, who were to take the depositions of witnesses to be examined by them, in writing, and return the same with the said commission; and that the said estate was to be divided and separated, and one-third part thereof set out in severalty and declared to belong to the said E. B. and his heirs; and the remaining two thirds thereof, declared to belong absolutely to the plaintiff, to be held in severalty by him; and the respective parties were decreed to convey their several shares to each other, to hold in severalty according to their respective undivided shares thereof; and that it should be referred to H. R., one of the Masters of this Court, to settle the conveyances, in case the parties differed about the same; as by the said proceedings and decree now remaining as of record in this honorable Court, reference being thereunto had, will more fully appear. And the plaintiff further sheweth unto your honors, that the commission awarded by the said decree never issued, on account of the said E. B. going abroad, and being, until lately, out of the jurisdiction of this honorable Court; but the said E. B. having since returned, and the inconvenience mentioned in the plaintiff's former bill [*for partition*] still subsisting, the plaintiff is desirous of having the said decree forthwith carried into execution, but from the great length of time which has elapsed, and the refusal of the said E. B. to concur therein, the plaintiff is advised the same cannot be done without the assistance of this honorable Court. To THE END, therefore, &c. And that the said decree may be directed to be forthwith carried specifically into execution, and the said E. B. ordered to do and concur in all necessary acts for that purpose. May it please, &c. [*Prayer for subpoena against E. B.*].

¹ For case of a petition for the enforcement of a decree, see Davis v. Parker, 14 Allen, 105, 106.

be fraudulent and void; and that an account may be taken of what, if anything, is now due to the said C. D. for principal and interest on the said mortgage; and that an account may also be taken of the rents and profits of the said mortgaged premises, which have, or without his wilful default might have been, received by or on behalf of the said C. D., and if the same shall appear to have been more than the principal and interest due on the said mortgage, then that the residue thereof may be paid over to the plaintiff, and that the plaintiff

* 2071 may be at liberty * to redeem the said mortgaged premises, on payment of the principal and interest, if any, remaining due on the said security; and that the said C. D. may be decreed, on being paid such principal money and interest, to deliver up possession of the said mortgaged premises, free from all incumbrances, to the plaintiff, or as he shall appoint, and to deliver up all title-deeds and writings relating thereto. [General relief.] May it please, &c. [Prayer for subpoena against C. D., &c.)

SECTION XXXVI.

Bill in the Nature of a Bill of Revivor.

108. *Where there has been a devise of real estate, against a vendee for the specific performance of an agreement.*

The plaintiff A. B., of, &c. That the plaintiff, on or about —, filed his bill of complaint in this honorable Court against C. D., of, &c., thereby stating [see form of specific performance of an agreement]. [Set forth the material part of the bill and the prayer.] That the said C. D. being served with process of subpoena, appeared to the said bill, but before he put in his answer thereto, he, the said C. D., departed this life, having first, when of sound mind, duly made and published his last will and testament in writing (which was executed by him, and attested as by law is required for passing real estates by devises), and thereby gave and devised all his real estates (comprising the estate so agreed to be sold by him to the plaintiff as aforesaid) to E. F., of, &c. (the defendant hereinafter named), his heirs and assigns forever, as by the said will, reference being thereunto had, will appear. And the plaintiff further showeth unto your honors, that the said suit became abated by the death of the said C. D.; but, notwithstanding, the plaintiff is advised that he is entitled to have the said agreement specifically performed by the said E. F. as such devisee as aforesaid; and which said devise the plaintiff expressly charges is in every respect valid and effectual: To the end, therefore, &c. And that the plaintiff, under the circumstances aforesaid, may have all such benefit against the said E. F. of the said suit, so commenced as aforesaid, as he would have had in case the said C. D. had been living, or that the said E. F. may show good cause to the contrary. May it please, &c. [Subpoena.]

*Bill to carry a Decree into Execution.¹***109. Where a decree of partition has been obtained and not executed.**

Humbly complaining, showeth unto your honors the plaintiff A. B., of, &c., that the plaintiff, on or about the — day of —, filed his bill of complaint in this honorable Court against E. B., stating [*set out substance of a bill for partition*] and praying [*set out prayer verbatim*]. And the plaintiff further showeth, that due process having been served upon the said E. B., he appeared and put in his answer to said bill, to which answer a replication was filed [*or, on which answer issue was joined*]. And the said cause being duly at issue, the same came on to be heard, and was heard, before your honors on the — day of —, when your honors were pleased to order and decree that a commission should issue to certain commissioners to be therein named, to make partition of the estate in question, who were to take the depositions of witnesses to be examined by them, in writing, and return the same with the said commission; and that the said estate was to be divided and separated, and one-third part thereof set out in severalty and declared to belong to the said E. B. and his heirs; and the remaining two thirds thereof, declared to belong absolutely to the plaintiff, to be held in severalty by him; and the respective parties were decreed to convey their several shares to each other, to hold in severalty according to their respective undivided shares thereof; and that it should be referred to H. R., one of the Masters of this Court, to settle the conveyances, in case the parties differed about the same; as by the said proceedings and decree now remaining as of record in this honorable Court, reference being thereunto had, will more fully appear. And the plaintiff further showeth unto your honors, that the commission awarded by the said decree never issued, on account of the said E. B. going abroad, and being, until lately, out of the jurisdiction of this honorable Court; but the said E. B. having since returned, and the inconvenience mentioned in the plaintiff's former bill [*for partition*] still subsisting, the plaintiff is desirous of having the said decree forthwith carried into execution, but from the great length of time which has elapsed, and the refusal of the said E. B. to concur therein, the plaintiff is advised the same cannot be done without the assistance of this honorable Court. To THE END, therefore, &c. And that the said decree may be directed to be forthwith carried specifically into execution, and the said E. B. ordered to do and concur in all necessary acts for that purpose. May it please, &c. [*Prayer for subpoena against E. B.*].

¹ For case of a petition for the enforcement of a decree, see *Davis v. Parker*, 14 Allen, 105, 106.

*Cross-Bill.*110. *Cross-bill by an administrator de bonis non of a deceased executor, to have a general release executed, &c.*

Humbly complaining, showeth unto your honors, the plaintiff T. B., of, &c., administrator of the goods and estate which were of R. H., late of, &c., deceased, at the time of his death, left unadministered by M. H., late of, &c., in her lifetime, now deceased, and which said M. H. in her lifetime, and at the time of her death, was administratrix of the goods and estate which were of the said R. H., deceased, at the time of his death; that J. M., late of, &c., deceased, when of sound mind, duly made his last will and testament in writing, and thereby, after bequeathing several pecuniary legacies, gave the residue of his goods and estate, subject to the payment of his debts, to his daughter H., then an infant under the age of twenty-one years, but now the wife of J. C., of, &c. (and which J. C. and H. his wife, are two of the defendants hereinafter named), and thereby appointed R. P., of, &c. (another defendant hereinafter named), and the said R. H., executors of his said will; as by the said will, reference being thereunto had, will more fully appear. And the plaintiff further showeth unto your honors, that the said testator died on or about the — day of —, without altering or revoking his said will, leaving his said daughter H. him surviving; and upon, or soon after his decease, the said R. P. and R. H., as such executors as aforesaid, duly proved the said will in the proper Court, and the said R. P., who principally acted in the execution of the said will (the said R. H. having only interfered for the sake of conformity) under and by virtue of such probate, possessed himself of a considerable part of the said testator's goods and effects.

And the plaintiff further showeth unto your honors, that the said R. H. departed this life on or about —, and shortly after his decease letters of administration were duly granted to the said M. H., his wife, who died on or about —; and after her decease such letters of administration of the unadministered goods and estate of the said R. H., deceased as aforesaid, were duly granted to the plaintiff by the proper Court of Probate, as by such letters of administration, reference being thereunto had, will appear.

And the plaintiff further showeth unto your honors, that the said R. H., previously to his death, accounted for and paid to the said R. P. as such co-executor as aforesaid, all such part of the estate of the said testator as had been received by him, the said R. H., as such executor as aforesaid, and no part of the said estate remained in the hands of

the said R. H. at the time of his decease, previously whereto
 * 2074 * the said R. H. resided in the country, where his house was
 robbed, and all papers relative to his acts as such executor as
 aforesaid, and for which he had accounted as hereinbefore mentioned,
 were stolen, and have never hitherto been recovered.

And the plaintiff further showeth unto your honors, that the said J. C. and H. his wife, duly intermarried previously to the said H. attaining the said age of twenty-one years, which she has since done, and after that period the said R. P. duly accounted for the residue of the said testator's estate with the said J. C. (who in the right of said H., his wife, became entitled to receive the same), and thereupon obtained a general release from the said J. C. and H. his wife, of all demands in respect thereof, as by the said release, reference being thereunto had, will appear. And the plaintiff hoped under the circumstances aforesaid, he would not have been called upon for any account of the administration of the said testator's estate. But now so it is, may it please your honors, &c., that the said J. C. and H. his wife, &c., have lately filed their bill in this honorable Court against the plaintiff as such representative of the said R. H., deceased, as aforesaid, for an account of the estate of the said testator J. M. received by the said R. H., deceased, in his lifetime, as such executor as aforesaid, thereby praying that the plaintiff may be decreed to pay the said J. C., in right of his wife, what, upon such account, shall appear to be due to the said J. C., in right of the said H., his wife, out of the assets of the said R. H.; and to which said bill they have made the said R. P. a defendant, without praying any account or relief against him. And they pretend that there are various receipts and accounts [*particularizing those charged in the original bill*] of the said R. H., deceased, as such executor as aforesaid, as to the estate of the said testator, which remained unaccounted for by the said R. H. at his decease, and which ought to be paid by the plaintiff. Whereas the plaintiff charges the contrary thereof to be true [*negativing specifically the pretended receipts and accounts*]; and that an account was stated, and a settlement of accounts took place between the said R. H., previously to his death, and the said R. P., and that an account has likewise been stated and settled by and between the said R. P. as such surviving executor as aforesaid, and the said J. C. in right of the said H., his wife, since she attained the age of twenty-one years as aforesaid; and that no demand was ever made on the estate of the said R. H. in respect of his accounts, until lately, when the loss of such papers as aforesaid was discovered, and of which loss the plaintiff charges an undue advantage is intended and attempted to be taken; and the plaintiff also charges, that the said R. P. abets the said J. C. and H. his wife in their proceedings, and refuses to indemnify the personal estate of the said R. H., in respect of his accounts in the execution of the will of the said testator J. M. so accounted for by him, and settled with the said R. P. as aforesaid; * and the * 2075 said R. P. also refuses to inform the plaintiff what he knows of the matters aforesaid, or any of them, and also denies such statements as have been made by him relative thereto. All which actings, &c. In tender consideration whereof, &c. To THE END, therefore, &c. And that the said J. C. and H. his wife may be decreed to execute to the plaintiff, as such administrator of the goods and estate of the said R. H., deceased, left unadministered by the said M. H., also deceased,

at the time of her death, a general release of all claims and demands upon such unadministered estate and effects of the said R. H., deceased as aforesaid, in respect of all the accounts of the said R. H. in the execution of the will of the said testator J. M.; or that an account may be taken of the said estate of the said testator J. M., received by the said R. H., and of his application thereof; the plaintiff being willing and hereby offering to pay what (if anything) shall appear to be due on the balance of such account; and that the said R. P. may be decreed to indemnify the estate of the said R. H., and the plaintiff, as such administrator thereof as aforesaid, in respect of such part thereof as the said R. H. paid to, or by the order, or for the use of the said R. P., or otherwise to account for and pay the same to the plaintiff. And that the said J. C. and H. his wife may be decreed to pay to the plaintiff his costs of this suit. And that the plaintiff may have such other and further relief, &c. May it please, &c.

2064

SECTION XXXIX.

INFORMATIONS.

111. *Information to restrain the making a carriage road and breaking up a public foot-path, in order to prevent certain streets from being made thoroughfares for carriages contrary to the intention of a statute.*

INFORMING, showeth unto your honors, C. I. R., of, &c., Esq., Attorney-General of the State [or Commonwealth] of, &c., at and by the relation of A. B., &c., &c., against D. Y., &c., &c., that there is situate, lying, and being within the town of —, a certain public street, called V. Lane, leading from a certain other public street, called B. Street, to a certain other public street, called G. Street, and communicating on the north side thereof with certain other public streets, called C. Street, old B. Street, and S. Row. And the Attorney-General aforesaid, by the relation aforesaid, further showeth that at the east end of the said street called V. Lane, there is a certain other public street, called S. Street, leading from thence into a certain other public street, called P. Street, and that along the south side of said street, called V. Lane, from S. Street to B. Street, there is, and for years past has been, a common and public foot-path, which has been from time to time paved with flag-stones at the expense of the inhabitants of the said town of —, for the convenience of persons passing and repassing on foot, the said street called V. Lane, being a great public thoroughfare for foot-passengers from B. Street to S. Street, although there is not nor ever has been any thoroughfare for carriages along the said street from B. Street to S. Street, by reason of certain wooden posts, which are, and ever since the making of the said street, called V. Lane, have been placed across the said street a few feet to the eastward of S. Row. And the Attorney-General aforesaid by the relation aforesaid showeth that the said common and public footway from B. Street to S. Street is and ever since the making of the same has been bounded on the south for the most part by a certain ancient brick wall, which forms the northern fence and boundary of certain lands called M. Gardens and B. Gardens, and that there is not nor ever has been any public way or opening on the north side of the said footway, so that the people of the — in passing and repassing on the footway have at all times *had the free and uninterrupted use thereof without *2077 any hurt, hinderance, or obstruction whatsoever. And the Attorney-General aforesaid by the aforesaid relation further showeth that

upwards of —— years since, the then owners of the said lands called M. Gardens and B. Gardens, severally claimed a right to open a public street or way from P. through their respective lands into the said street, called V. Lane, and threatened to make a public street or streets accordingly, but such claim being resisted on the part of the proprietors and inhabitants of the said several streets, called V. Lane, C. Street, Old B. Street, and S. Row, by reason of the disturbance and injury that would thereby be occasioned to the said several streets, the said owners of the said lands thought fit to abandon such claim, and afterwards by an act of the —— made and passed on the —— day of ——, entitled "An Act," &c., it was provided, &c., which provision was inserted in the said Act for the purpose of protecting the said streets called V. Lane, S. Row, C. Street, and Old B. Street, from any thoroughfare for carriages from P. to the said street called V. Lane, by the way of S. Street or by any other means than by the way of B. Street. And the Attorney-General aforesaid by the relation aforesaid further sheweth that the said D. Y., proprietor of the said lands called M. Gardens, and the defendant hereinbefore named, has formed a plan for making, and is about to make, a public street or way for horses, carts, and carriages, from P. through the said lands called M. Gardens and the public street called V. Lane, over the aforesaid common and public footway on the south side of the said street; and in and towards the execution of such plan has actually made an opening in the said ancient boundary wall, and has taken up a part of the flag pavement of the said footway. And the said Attorney-General at the aforesaid relation further sheweth, that such public street or way so intended to be made by the said defendant D. Y., if carried into execution, will greatly interrupt and obstruct the said common and public footway on the south side of the said street, called V. Lane, and will be to the great damage and common nuisance of all the people of ——, passing and repassing by the said footway. And the Attorney-General aforesaid at the relation aforesaid further sheweth, that such intended street, if carried into execution, will be opposite to the end of S. Row and westward of the said wooden posts, so as aforesaid placed across the said street called V. Lane, and by making a direct thoroughfare for horses, carts, and carriages from P. into the said street called V. Lane, will actually defeat the provision made as aforesaid in the said Act for the protection of the said streets called V. Lane, S. Row, C. Street, and Old B. Street, from any thoroughfare for carriages, and will therefore be contrary to the true intent, meaning, and spirit of the said Act. To THE END, therefore, that the said D. Y. may, according to the best of his knowledge, remembrance, information, and belief, &c.

* 2078 * And that the said defendant may answer the premises; and that the said defendant, his agents, servants, and workmen, may be restrained by the order and injunction of this honorable Court from proceeding to make and open any public street or way from the said lands called M. Gardens into the said street called V. Lane, over the said common and public footway; and that the said defendant may be directed to replace the flag-stones of the said footway so as aforesaid removed by him or by his order, and to put the same footway into the

same state and condition as the same was in before his obstruction aforesaid. [And for further relief.]

J. L.

112. *Information at the relation of certain freeholders and inhabitants of a parish, forming a society called "The Twenty-Four," by whom the affairs of the parish were managed, to establish a bequest of stock for the benefit of the poor of a certain district within the same parish, praying also to have the stock transferred into the — name of —*

In Chancery.

To, &c.

Informing, showeth your honors, C. I. R., of, &c., Esq., Attorney-General of the State of [or Commonwealth] of, &c., at and by the relation of E. C. R., W. G., &c., &c., all house-keepers and inhabitants, having freehold estates within the parish of T., in the county of N., that there has been from time immemorial within the said parish a certain society consisting of twenty-four persons, being house-keepers and inhabitants, and having freehold estates within the said parish, and which said society has always been, and still is, called or known by the name or description of "The Twenty-Four;" twelve of which twenty-four have from time immemorial been elected or chosen out of the principal inhabitants having freehold estates within the township or district of N. S., within the said parish, and the remaining twelve out of the principal inhabitants having freehold estates within the rest of the said parish, commonly called the country part of the said parish, the said twenty-four persons having constantly had the direction and management of the business and concerns of the said parish. And the Attorney-General aforesaid, at the relation aforesaid, also informeth your honors, that, upon the death of any one or more of the said society, or in case of his or their selling or disposing of his or their freehold or freeholds within the said parish, the survivors and others of the said society have been from time to time, whereof the memory of man is not to the contrary, used and accustomed to elect and choose, and have accordingly elected and chosen, on the — day of — following such event, some other person or persons to be a member or * members of the * 2079 said society in the room or stead of the person or persons so dying or disposing of his or their freehold as aforesaid. And the Attorney-General aforesaid, at the relation aforesaid, further informeth your honors, that the relators and H. H., late of W., in the county of N., Esq., were the persons who were last elected or chosen as members which composed the said society; and the said H. H. having lately departed this life, your relators are the surviving and present members of the said society. And the Attorney-General aforesaid, at the relation aforesaid, further informeth your honors that M. R., late of, &c., widow, deceased, in her lifetime duly made and published her last will and testament in writing, bearing date on or about the — day of —, and thereby amongst other things appointing R. J. and P. P., of, &c., Esqs., executors thereof, she gave and bequeathed unto her said executors in

the words and figures or to the purport and effect following, that is to say : " I give, devise, and bequeath unto the said P. P. and R. J., and the survivor of them, and the executors and administrators of such survivor, the sum of \$—, East India annuities, part of which is now standing in my name in the banks of that company, in trust that they, my said trustees and the survivor of them, and the executors and administrators of such survivor, do and shall pay to, authorize, and permit and suffer the house-keepers and inhabitants of the township of N. S., commonly called 'The Twenty-Four,' for the time being forever, to receive the dividends, produce, and interest of the said sum of \$—, East India annuities, as and when the same shall become due and payable, in trust to be by them or any five or more of them, paid, applied, and disposed of from time to time forever, unto and amongst such of the poor of the said township as they shall think proper ; " as in and by such will and the probate thereof, relation being thereunto had, will more fully appear. And the Attorney-General aforesaid, at the relation aforesaid, further informeth your honors, that the said testatrix M. R. departed this life on or about the — day of —, without revoking or altering her said will, and upon or soon after her death the said P. P. and R. J. duly proved the said will in the appropriate Court, and undertook the executorship thereof. And the Attorney-General aforesaid, at the relation aforesaid, further informeth your honors that the said testatrix M. R. was at the time of her death possessed of or entitled unto a considerable personal estate, consisting of many valuable particulars, and particularly she was possessed of or entitled unto a considerable sum of money in East India annuities to a much larger amount than the said legacy ; and upon or shortly after her decease, the said P. P. and R. J., by virtue of the said will and the probate thereof, possessed themselves of all the said personal estate and effects, and procured the said East India annuities to be transferred into their names.

And the Attorney-General aforesaid, at the relation aforesaid,
* 2080 further informeth your honors that the personal * estate and effects late of or belonging to the said testatrix, and possessed by her said executors since her decease, were more than sufficient (exclusive of the said East India annuities) for the payment of all her debts, funeral expenses, and legacies, all which debts, funeral expenses, and legacies, save the aforesaid charitable legacy, have been long since fully paid and discharged ; and the said East India annuities now remain standing in the names of the said P. P. and R. J., to answer and satisfy the aforesaid legacy. And the Attorney-General aforesaid, at the relation aforesaid, further informeth your honors that your relators being the persons meant and intended in the said testatrix's will mentioned, of the house-keepers and inhabitants of the township of N. S. commonly called "The Twenty-Four," hoped that the said P. P. and R. J. would have paid and applied the interest or dividends of the said East India annuities for the benefit of such person or persons as are entitled thereto by virtue of the said testatrix's will. BUT NOW SO IT IS, may it please your honors, the said P. P. and R. J. decline to pay the interest or dividends of the said sum of \$ — East India annuities unto

your relators, to be applied according to the direction of the said testatrix's will, alleging that they cannot do so with safety to themselves without the direction of this honorable Court for their indemnity therein. And the Attorney-General aforesaid charges that the charitable intentions of the said testatrix are in danger of being frustrated in process of time, when, after the deaths of the said defendants, it may be difficult to find out who are or who may be the personal representatives of the said testatrix, in order to obtain a representation to her, and the obtaining or procuring a representation to her will be attended with considerable expense, and therefore the said Attorney-General and the said relators charge that the said sum of money in annuities aforesaid ought to be transferred into the name of the — of this honorable Court upon the trusts and for the purposes aforesaid. To THE END, therefore, that the said P. P. and R. J. may upon their several and respective corporal oaths, &c., &c.

And that the aforesaid charity may be established ; and that the said P. P. and R. J. may be decreed to transfer the before-mentioned sum of \$ — in East India annuities into the name of the — of this honorable Court, upon the trust and for the purpose mentioned and expressed in the said testatrix's said will concerning the same, and that the trust thereof may be declared accordingly ; and that the interest or dividends which have become due thereon since the death of the said testatrix, and which may hereafter become due thereon, may from time to time forever hereafter be paid to the relators and their successors, the twenty-four of the house-keepers and inhabitants of the said township of N. S., to be applied in the manner by the said testatrix's will directed, and that such further and other directions may be given for the establishment and maintenance of the said charity as to your honors may seem meet and this case may require. May it please, &c.

2069

* CHAPTER VI.

SECTION XL.

INTERROGATORIES.¹

ACCORDING to the present English practice, the bill of complaint contains no interrogatories for the examination of the defendant. But if the plaintiff requires an answer from any defendant, he must file interrogatories for that purpose within eight days after the time limited for the appearance of such defendant ; and no defendant will be required to answer a bill until interrogatories shall have been so filed.

113. The form of such interrogatories is prescribed in the general orders of 7th August, 1852, as follows: —

In Chancery.

JOHN LEE	Plaintiff.
JAMES STYLES	Defendants.
and	
HENRY JONES	

**Interrogatories for the examination of the above-named defendants,
in answer to the plaintiff's bill of complaint.**

1. Does not the defendant Henry Jones claim to have some charge upon the farm and premises comprised in the indenture of mortgage of the first of May, one thousand eight hundred and fifty, in the plaintiff's bill mentioned?
 2. What are the particulars of such charge, if any, the date, nature, and short effect of the security, and what is due thereon?
 3. Are there or is there any other mortgages or mortgage, charges or charge, incumbrances or incumbrance, in any or what manner affecting the aforesaid premises or any part thereof?
 4. Set forth the particulars of such mortgages or mortgage, charges or charge, incumbrances or incumbrance; the date, nature, and short effect of the security; what is now due thereon, and who is or are entitled thereto respectively, and when and by whom, and in what manner, every such mortgage, charge, or incumbrance was created.

The defendant James Styles is required to answer all these interrogatories.

¹ As the decree emanates from the Judge, it is binding, although all the interrogatories submitted to a jury were not answered. *Mantle v. Noyes*, 5 Mont. 274.

The defendant Henry Jones is required to answer the interrogatories numbered 1 and 2.

Y. Y.
[Name of Counsel.]

* 114. *As to a deed.*

* 2082

Was not the indenture or deed of the — day of —, in the plaintiff's bill mentioned, or some and what other indenture or deed, of some and what other date, made between the several persons, and whether or not to the purport and effect in the plaintiff's bill in that behalf mentioned and set forth, or between some and what other persons, or to some and what purport and effect?

115. *As to documents.*

1. Have not or has not the defendants, or some or one and which of them, now, or had not they, or some or one or which of them, heretofore and when last in their, or some or one and which of their, possession or power, or in the possession or power of their, or some or one and which of their, solicitors or solicitor, agents or agent, and whom by name, some and what deeds or deed, agreements or agreement, accounts or account, books of account or book of accounts, cash books or cash book, or other books or book, letters or letter, bills or bill of costs, receipts or receipt, vouchers or voucher, memoranda or memorandum, or some and what other documents or document, paper writings or paper writing, or some and what copies or copy, or extracts or extract of or from the several particulars aforesaid, or some or one and which of them, referring or relating to the several matters hereinbefore stated, or to some of them, and would not the truth of such matters, or of some and which of them, appear by such particulars if the same were produced?

2. Let the defendants severally set forth a full, true, and perfect list or schedule of all such particulars, distinguishing those which now are from those which once were, but are not now, in their respective possession or power.

116. *As to personal estate.*

1. Set forth a full, true, and particular account of all the personal estate [not specifically bequeathed¹], or of which the testator — died possessed or entitled, and the particulars whereof the same consisted at the time of his death, and the true and utmost value thereof, specifying the amount of cash in the testator's house, at his banker's or elsewhere, and the debts or sums of money owing to him, and from whom respectively; and set forth what part or parts of the said testator's personal estate has or have been received by the defendants —

¹ The passage within brackets should be omitted, if it is supposed that the personal estate is not sufficient for payment of debts.

and —, or either and which of them, or any person or persons, and whom, by name, by their or either of their order, or for their or either of their use.

* 2083 * 2. Also set forth the respective amounts of the said testator's funeral and testamentary expenses, and of his debts and the several particulars thereof respectively, and the several amounts paid by the defendants, or either and which of them, for or in respect of the funeral and testamentary expenses of the said testator, and of his debts respectively.

3. Set forth an account of all and every the sum and sums of money paid, and when and by whom and to whom, for or in respect of the several legacies bequeathed by the will of the testator.

4. Set forth the amount of the clear residue of the said testator's personal estate, and how the same and every part thereof is invested, and in whose hands the same and each and every or any part thereof is.

5. Set forth whether the debts due to the said testator, or any and which of them, or any other and what part or parts of his personal estate are or is unreceived, unenumerated, or outstanding, and how and upon what security or securities, and why have the same debts and such other personal estate not been respectively received, converted, or gotten in.

117. *Interrogatories to a bill by a purchaser against a vendor for specific performance of a contract for sale of a freehold estate.*

1. Whether he [the vendor] was not seised and possessed of, or otherwise well entitled unto, the said freehold messuage or tenement, with the out-buildings, pleasure grounds, pasture lands, and other the appurtenances thereto adjoining or belonging, and the inheritance in fee-simple thereof ? and

2. Whether, being so seised and entitled as aforesaid, he did not, at the time hereinbefore in that behalf mentioned, or at some other and what time, cause all the said estate and hereditaments to be put up to sale by public auction by the said Mr. W., at —, in three lots, pursuant to printed particulars and conditions of sale previously advertised and published thereof ? and

3. Whether the said premises were not bought in by him the said defendant at the time of the said sale, or how otherwise ? and

4. Whether the plaintiff did not, in or about the said month of April, or when else, enter into a treaty with the said defendant for the absolute purchase of the same estate and premises, together with the timber and other trees, fixtures, and other effects, in and about the same, discharged from all incumbrances, at or for the price or sum of \$—, or at some other and at what price ? and

5. Whether the said defendant did not agree to accept the said sum of \$— as the consideration for the said estate and premises ? and

* 2084 * 6. Whether thereupon such agreement in writing of such date, or of or to such purport and effect as hereinbefore in that

behalf mentioned, was not duly entered into and signed by the respective solicitors for the plaintiff and the said defendant, in the name and on the behalf of the plaintiff and the said defendant, or how otherwise ? and

7. Whether the plaintiff did not, previously to the signing of the said agreement, pay the said defendant the sum of \$—, as a deposit, and in part of his said purchase-money, or sum of \$— ? and

8. Whether the said defendant hath not since delivered up possession of the said purchased premises to the plaintiff ? and

9. Whether the plaintiff hath not always been ready and willing to perform his part of the said agreement, and, on having a good and marketable title shown to the said estate and premises, and a conveyance of the fee-simple thereof, discharged of all incumbrances, made to him, to pay the residue of said purchase-money or sum of \$— to the said defendant ? and

10. Whether the said defendant doth not, and why, refuse to perform his part of the said agreement ? and

11. Whether the said defendant is not able to make a good and marketable title to the said estate and premises ; and if not, why not ? and

12. Whether he doth not, and why, decline or refuse to make a good and marketable title to the said premises ? and

13. Whether the plaintiff hath not required him so to do, and made such offer to him as in that behalf aforesaid, or to that or the like or some and what other purport or effect ? and

14. Whether the whole of the residue of the purchase-money of the said premises hath not been ready and unproductive in the hands of the plaintiff, for the purpose of completing said purchase, from the time the same ought to have been completed by the terms of said agreement, or from some and what other time ?

PART II.

FORMS OF THE VARIOUS MODES OF DEFENCE TO SUITS IN EQUITY.

CHAPTER VII.

DEMURRERS.

1. *Title and commencement.*

THE demurrer of C. D., defendant, to the bill of complaint of A. B., the above-named plaintiff.¹

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth that, &c.
[Here set forth the cause of demurrer.]

2. *Conclusion.*

Wherefore and for divers other good causes of demurrer appearing in the said bill, the defendant doth demur thereto, and humbly demands the judgment of this Court whether he shall be compelled to make any further or other answer to the said bill; and prays to be hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

A. B.,
[Counsel's name.]

¹ Other headings.—The demurrer of John Jones (in the bill by mistake called William Jones), the above-named defendant [or, one of the above-named defendants], to the, &c.

Or,

The joint and several demurrer of A. B. and C. D., the [or, two of the] above-named defendants, to the, &c.

Or,

The joint demurrer of A. B. and C. his wife, the [or, two of the] above-named defendants, to the, &c. Or, if they have married since she was made a defendant, say: The joint demurrer of A. B. and C. his wife, lately, and in the bill called C. D., spinster,—or, widow,—to the, &c.

* 3. *Demurrer for want of Equity.*

* 2086

[Title and commencement as before.]

Cause of demurrer.] That the plaintiff hath not in and by his said bill made or stated such a case as entitles him, in a Court of Equity, to any discovery from this defendant [or, these defendants or either of them] or to any relief against him [or, them or either of them] as to the matters contained in the said bill or any of such matters. Wherefore,¹ &c.

Or thus.] That the said bill doth not contain any matter of Equity whereon this Court can ground any decree, or give to the plaintiff any relief against this defendant [or, these defendants, or either (any) of them].²

4. *Form of Demurrer prescribed in Chancery Rules of New Hampshire.*

In the Supreme Judicial Court.

H—, ss.

T. P. v. T. D. & another.

The demurrer of T. D.

The said T. D. says that the plaintiff is not entitled upon said bill to the relief he prays for, because he had a plain and adequate remedy at Law, and because, &c.

T. D., by

A. T., his Solicitor.

5. *Demurrer for multifariousness.*

The demurrer of, &c.

This defendant, by protestation, &c., doth demur, and for cause of demurrer sheweth, that it appears by the said bill that the same is exhibited against the defendant and the several other persons therein named as defendants thereto for distinct matters and causes, in several whereof, as appears by the said bill, this defendant is not in any manner interested, or concerned, and that the said bill is altogether multifarious. Wherefore,³ &c.

* 6. *Demurrer on the ground of the Statute of Frauds.* * 2087

That it appears by the said bill that neither the promise or contract which is alleged by the said bill, and of which the plaintiff by the said bill seeks to have the benefit, nor any memorandum or note thereof,

¹ Leave to correct a clerical error in demurrer granted, time for demurring not having expired. Richardson v. Hastings, 7 Beav. 58. Demurrer must state some cause arising out of the bill, but must not introduce a material fact. See Wood v. Midgley, 5 De G. M. & G. 41; 23 L. J. Ch. 553.

² Barkworth v. Young, 4 Drew. 1; Drewry, Eq. Pl. 145.

³ See Rump v. Greenhill, 1 Jur. N. S. 1^o3, R; 20 Beav. 512; Picton v. Lockett, by the Vice-Chancellor of England, April, 1837, MSS.

was ever reduced into writing or signed by this defendant [or, these defendants or either (any) of them], or any person authorized thereunto, within the meaning of the statute passed in the twenty-ninth year of King Charles the Second [or, of Chapter 105 of the General Statutes of Massachusetts] for the prevention of frauds and perjuries.

7. Demurrer and answer.¹

The joint and several demurrer of W. L. and J. L. to part,² and the joint and several answer of the same defendants to the residue, of the original bill of complaint of T. A. P. and J. B., plaintiffs.

These defendants, to so much of the plaintiffs' bill as prays that they may be decreed to transfer to the said plaintiffs, as the executors of G. M. in the said bill mentioned, the 21-64th shares of the ship called, &c., in the said bill mentioned, and that the said defendant J. L. may be decreed to transfer to the plaintiffs the 21-64th shares of the brig or vessel called, &c., in the said bill mentioned, and to so much of the said bill as prays that an account may be decreed to be taken of all the dealings and transactions between these defendants and the said G. M. with respect or in relation to the said two vessels, and of all sums of money respectively received and paid by these defendants and the said G. M. respectively, or by any other person by their or any of their respective order, or for their or any of their use, and that these defendants should be decreed to pay what should be found due thereon, so far as such dealings and transactions and sums of money, or any or either of them, relate to or concern the said 21-64th shares of the said vessel called, &c. or the said 21-64th shares of the said vessel called, &c., and the freights or freight, or any shares or share of the freights or freight, of such vessels or either of them, and to so much of the said bill as prays further or other relief with respect or in relation to the said shares of the said two vessels respectively or the freight thereof respectively.

Cause of demurrer.] These defendants do demur and for cause of demurrer show, that the said plaintiffs have not made or stated such a case as entitles them in a Court of Equity to the relief so prayed for, or any part thereof; and these defendants humbly pray the

* 2088 judgment * of the Court as to such parts of the bill as they have so demurred to as aforesaid.

Answer to residue of bill.] And as to the residue of the said bill, that is to say, all the discovery, and the rest of the relief, by the said bill prayed, these defendants for answer thereto severally say, they admit it to be true that Messrs. C. & N. were, in the month of, &c., engaged in building at Liverpool, on their own account, a certain brig or vessel, and that in the month of, &c., these defendants W. L. and J. L. did

¹ For form of plea and demurrer, see Carter v. Treadwell, 3 Story, C. C. 42, 43, 44. Osborne v. Jullion, 3 Drew. 552; 4 W. R. 663; and see, as to form of plea and demurrer,

² It is submitted that this is the correct form, notwithstanding what is said in the report of Barnes v. Taylor, 4 W. R. 577.

carry on business together in partnership as wine merchants and general dealers,¹ &c., &c.

8. General form of demurrer, plea, and answer.

In Chancery.

Between, &c.

The demurrer, plea, and answer of A. B., the above-named defendant [or, one of the above-named defendants], to the bill of complaint [or, amended bill of complaint] of the above-named plaintiff.

(1) *Demurrer.*] I, the defendant A. B., by protestation, not confessing or acknowledging all or any of the matters and things in the said bill contained to be true, in such manner and form as the same are therein set forth and alleged, as to so much of the said bill as seeks (state what), and also as to so much of the said bill as seeks, &c., do demur thereto.

And as to the discovery and relief sought by the said bill, save so much thereof as relates to the premises therein mentioned to be situate at S., in the county of D., for cause of demurrer I show that, &c.

And as to so much of the said discovery and relief as relates to the said premises at S. aforesaid, for cause of demurrer I show that, &c.

Wherefore and for divers other good causes of demurrer appearing in the said bill, I pray the judgment of this honorable Court whether I shall be compelled to make any answer to such parts of the said bill as I have hereinbefore demurred to.

(2) *Plea.*] And I, the defendant A. B., not waiving my said several demurrers, but wholly relying thereon, as to so much of the said bill as seeks, &c., and also as to so much of the said bill as seeks, &c., do plead thereto; and for plea say that, &c.; and I do aver that, &c.

All which last-mentioned matters and things I do plead in bar to so much of the said bill as is hereinbefore pleaded to; and I humbly * pray judgment of this honorable Court, whether I ought to * 2089 make any further answer to so much of the said bill as is hereinbefore pleaded to.

(3) *Answer.*] And I, the defendant A. B., not waiving my said several demurrers and plea, but wholly relying and insisting thereon, for answer to so much of the said bill as I am advised it is material or necessary for me to make answer unto, say as follows, &c.

[*Name of Counsel.*]

¹ In this case, the demurrer extended too far, in demurring to the relief sought in respect of the freight of the vessels, as well as the transfer of them, and it was held that, consistently with the law as to the registration of vessels, one person might be the legal owner of a ship, while another person was entitled in Equity to the freight. *Pictou v. Lockett*, V. C. E., April, 1837. MSS.; see also *Davenport v. Whitmore*, 2 Myl. & Cr. 177; *Armstrong v. Armstrong*, 21 Beav. 78. As to form of demurrer and answer, see *ante*, Vol. I. pp. 585, 711.

9. *Demurrer for want of parties.*

[*Title and commencement.*]

And for [further] cause of demurrer show, that there are not proper parties to the said information, and that there is not and are not any person or persons, party or parties,¹ to the said information who represents or represent, or has or have a common interest with the persons or class of persons whose interests the said information affects to protect, or for whom relief is thereby prayed.² Wherefore, &c.

10. *Another form of demurrer for want of parties.*

The demurrer of, &c.

These defendants by protestation, &c., do demur to the said bill, and for cause of demurrer show that it appears by the said plaintiff's said bill that a personal representative of R. S., the testator therein named, resident within the jurisdiction of the Court, is a necessary party to the said bill, and yet that there is no personal representative of the said testator resident within the jurisdiction of the Court a party to the said bill. Wherefore, &c.

Or thus.] That it appears by the said bill that it is necessary that the estate of the plaintiff's late wife, M. N., in the said bill named, should be represented in this suit; but no legal personal representative of the said M. N. is named a party thereto.

11. *Demurrer to a bill exhibited by an infant, where no next friend is named.*

[*Title and commencement.*]

That the said plaintiff, who appears by his said bill to be an infant under the age of twenty-one years, has exhibited his said bill without any person being therein named as his next friend. Wherefore, &c. [*Conclusion.*]

* 2090 * 12. *Demurrer to a bill where a plaintiff claimed under a will, and it was apparent on the face of the bill that he had no title.*

[*Title and commencement.*]

That the said plaintiff has not, as appears by his said bill, made out any title to the relief thereby prayed. Wherefore, &c. [*Conclusion.*]

¹ If the absent parties are necessary for any part of the relief prayed by the bill, it is an objection on demurrer. Per Lord Cottenham L. C., Penny v. Watts, 2 Phil. 152.

² See Att.-Gen. v. Poole, 2 Keen, 190; S. C. on appeal, 4 Myl. & Cr. 17; Hammond v. Messenger, 9 Sim. 238.

13. Demurrer to a bill of interpleader, for want of the necessary affidavit, and for want of Equity.

The demurrer of, &c.

This defendant by protestation, &c., doth demur in Law to the said bill, and for cause of demurrer showeth that, although the said plaintiff's said bill is upon the face thereof a bill of interpleader, yet the said plaintiff has not annexed to his said bill an affidavit that he doth not collude concerning such matters with any of the defendants thereto, which affidavit ought, according to the rules of this Court, as this defendant is advised, to have been made by the said plaintiff and annexed to the said bill; and for further cause of demurrer this defendant further showeth that the said bill does not contain sufficient matter of Equity whereupon this Court can ground any decree in favor of the said plaintiff, or give the said plaintiff any relief against this defendant. Wherefore, &c.

14. Demurrer to a bill of interpleader, because it does not show any claim of right in the defendant.

The demurrer of, &c.

This defendant, by protestation, &c., doth demur, and for cause of demurrer showeth, that the plaintiff has not in his said bill of interpleader shown any claim or right, title, or interest whatsoever in this defendant in or to the said estate called A., in the said bill particularly mentioned and described, in respect whereof this defendant ought to be compelled to interplead with C. D., in the said bill named, and the other defendant thereto. Wherefore, &c.

15. Demurrer to a bill for relief on a lost bond, for want of an affidavit of such loss being annexed to and filed with the bill.

[Title and commencement.]

That the said plaintiff by his said bill, as this defendant is advised, endeavors to entitle himself to a sum of money due upon the bond therein stated to have been entered into by this defendant to the said plaintiff, and suggests for Equity, that the said bond has been burnt, lost, or destroyed; and the said plaintiff has not by affidavit, annexed *to and filed with the said bill, made oath that the said bond is *2091 burnt, lost, or destroyed. Wherefore, &c. [Conclusion.]

16. Demurrer to a bill for relief against a mandamus.

[Title and commencement.]

As to so much and such part of the said plaintiff's bill as prays an injunction, or order in the nature of an injunction, to stay proceedings on the writ of mandamus, issued to compel the said plaintiff to hold a Court, and admit these defendants respectively as tenants thereto, these defendants severally demur, and for cause of demurrer show that it is

against the course and practice, and not within the jurisdiction of this Court, to interfere or afford relief against the said writ of mandamus, or any other proceeding of a criminal or mandatory nature. Wherefore, &c. [Conclusion.]

17. *Demurrer to a bill to restrain a private nuisance, the plaintiff not having established his right at Law.*

[Title and commencement.]

That the plaintiff has not, by his said bill, shown such a case as entitles him to such relief as is thereby prayed, inasmuch as it does not thereby appear that there was any impediment to an action at Law being brought by the said plaintiff to ascertain his right and that of this defendant, relative to the wall in the said bill particularly mentioned, or that in any trial or action verdict or judgment has been hitherto obtained by the said plaintiff for that purpose, or that there was previously to or at the time the said bill was filed, or now is, any authentic record of such right. Wherefore, &c. [Conclusion.]

18. *Demurrer, for want of privity, to a bill by an unsatisfied legatee against a debtor of his testator.*

[Title and commencement.]

That it appears by the said plaintiff's said bill, that there is no privity between the said plaintiff and this defendant, to enable the said plaintiff to call on this defendant for payment of any debt due to the estate of the said testator from this defendant. Wherefore, &c. [Conclusion.]

19. *Demurrer by an arbitrator made party to a bill to impeach his award.*

[Title and commencement.]

For that the said plaintiff has not, by his said bill, which seeks to set aside the award therein set forth, and to which this defendant is * 2092 made * a party in his character of an arbitrator, shown that he can have any decree against this defendant, whose answer could not be read as evidence against the other defendants to the said bill, or any of them ; and the said plaintiff, for anything that appears in the said bill to the contrary, might examine this defendant as a witness in the suit. Wherefore, &c. [Conclusion.]

20. *Demurrer to a bill brought against a defendant by a judgment creditor who had not sued out execution, for a discovery of goods of the debtor, alleged to have been fraudulently possessed by the defendant.*

[Title and commencement.]

That the said plaintiff has not alleged, nor does it appear by his said bill that he has sued out execution, and actually taken out a fieri facias

on his said judgment, and that until he has so done the goods of A. B. in the said bill named are not bound by the said judgment, nor the said plaintiff entitled to a discovery thereof. Wherefore, &c. [Conclusion.]

21. Demurrer where a discovery would subject the defendant to pains and penalties and forfeitures.

[Title and commencement.]

That the said information seeks to discover how this defendant came by the possession of the several goods therein particularly mentioned, whether it was not by fraud, violence, contrivance, or other means, &c., &c., but this defendant is advised, that any discovery of the manner in which such goods came into this defendant's possession, as an officer of the honorable united company of merchants trading to the East Indies, would or might subject this defendant to fine, or corporal punishment, and the penalties contained in the several acts of Parliament for the establishment of the said company, and also to a forfeiture of his rank and office in the service of the said company, and likewise of the said goods. Wherefore, &c. [Conclusion.]

22. Demurrer to a bill of review and supplemental bill on the ground that there are no errors in the decree, and that the leave of the Court was not first obtained.

These defendants by protestation, &c., do demur in Law thereto, and for cause of demurrer show, that there are no errors in the record and premises, and in the decree of the — day of —, in the said bill of review and supplemental bill mentioned, nor is there any sufficient matter alleged in the said bill of review and supplemental bill, to entitle *the said plaintiff to reverse the said decree; and for * 2093 divers other defects and errors appearing in the said bill of review and supplemental bill, these defendants do demur in Law thereto; and these defendants, for further cause of demurrer, humbly show, that, under the rules of this honorable Court, no supplemental or new bill in the nature of a bill of review, grounded upon any new matter discovered or pretended to be discovered since the pronouncing of any decree of this Court, in order to the reversing or varying of such decree, shall be exhibited without the special leave of the Court first obtained for that purpose; wherefore, and for that the said plaintiff does not allege by the said bill of review and supplemental or new bill that he had first obtained leave of this Court for exhibiting the said bill of review and supplemental or new bill, these defendants demur in Law thereto, and humbly pray the judgment of the Court, whether they ought to be compelled to put in any further or other answer to the said plaintiff's said bill of review and supplemental or new bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf, most wrongfully sustained.¹

¹ Ante, Vol. II. pp. 1577, 1578.

*CHAPTER VIII.

PLEAS.

1. Title and commencement of plea.¹

THE plea of —, defendant [or of —, defendants], to the bill of complaint [or, amended bill of complaint], of —, plaintiffs [or the joint and several plea of A. B. and C. D., defendants, &c.].²

This defendant [or these defendants], by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true, in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of the said bill, or to so much and such part of the said bill as prays, &c., or seeks a discovery from this defendant [or these defendants], whether, &c., saith [or say] that, &c.

2. Conclusion.

All which matters and things this defendant doth aver [or these defendants do aver] to be true, and he pleads [or they plead] the said [statute or release, &c., as the case may be (in bar)] to the said plaintiff's bill [or if the plea extend to part only, to so much of the said bill as hereinbefore particularly mentioned], and prays [or pray] the judgment of this honorable Court, whether he [or they] should be compelled [or ought to be required] to make any other or further answer to the said bill [or to so much of the said bill as is hereinbefore pleaded to], and prays [or pray] to be hence dismissed with his [or their] costs and charge in that behalf, most wrongfully sustained.

[Counsel's signature.]

3. Plea to part, and answer to residue of bill.³

The plea of —, defendant [or one of the defendants], to part, and the answer of the same defendant to the residue, of the bill of

¹ See ante, Vol. I. p. 681.

² Other headings.—The joint and several plea of A. B. and C. D., the [or, two of the] above-named defendants, to the, &c.

the, &c.—Or, if they have married since she was made a defendant, say: The joint plea of A. B. and C. his wife, lately, and in the bill called,—C. D., spinster,—or, widow,—to the &c.

Or,

The joint plea of A. B. and C. his wife, the [or, two of the] above-named defendants, to

For form of plea to part and demurrer to the residue of a bill in which plaintiff alleged himself to sue as administrator of a deceased per-

*complaint of —, plaintiff [or the joint plea and answer, or the * 2095 joint and several plea and answer, according to circumstances].

This defendant, to all the relief sought by the said bill, and also to all the discovery thereby sought, except the discovery sought by or in respect of [so much of the said bill as] prays that this defendant may answer and set forth] whether, &c. [*here the language of the interrogatories which it is necessary to answer, must be introduced*], this defendant does plead in bar, and for plea saith, &c. [*here follows the plea*].

All which matters and things this defendant does aver to be true, and does plead the same in bar to the whole of the said bill, except such part of the discovery thereby sought as aforesaid; and this defendant humbly prays the judgment of this honorable Court, whether he ought to be compelled to make any further or other answer to so much of the said bill as is hereby pleaded to, and he prays to be hence dismissed with his costs.

And for answer to such parts of the said bill as are excepted, this defendant says, that, &c.¹ [here the answer follows].

[*Counsel's signature.*]

I. PLEAS TO THE PERSON.

4. Plea that the plaintiff is an alien enemy.

[*Title and commencement as before.*]

That the said plaintiff A. B. is an alien, born of foreign parents, and in foreign parts, that is to say, at Calais, in the Kingdom of France, and out of the allegiance of *our said lord* the King, and under the allegiance of the said King of France, who is an enemy to our said lord the King, and to whom the parents of the said plaintiff adhere; * 2096 * and the said plaintiff before and at the time of filing his said

son, and also in his own private capacity, the plea denying that he was administrator, and the demurrer being that the bill showed no right to discovery or relief in his private capacity, see *Carter v. Treadwell*, 3 Story, 42, 43, 44.

¹ See *Mitf. Pl.* pp. 257, 329; *ante*, Vol. I. p. 603.

If the bill is demurrable, the defendant should demur and not plead. *Billing v. Flight*, 1 Mad. 230.

As to plea of stated account and release. — If error or fraud is charged by the bill, it must be denied by the plea as well as answered in support of the plea. See, as to form of the plea, *Phelps v. Sproule*, 1 M. & K. 231; *Holland v. Sproule*, 6 Sim. 623; *Parker v. Alcock*, 1 Y. & J. 432; *Att.-Gen. v. Brookshank*, 1 Y. & J. 430.

As to plea of adverse possession, see *Hardman v. Ellames*, 5 Sim. 640; 2 Myl. & K. 732.

As to plea stating descent to heir-at-law, see *Wood v. Skelton*, 6 Sim. 176.

The Statute of Frauds is generally taken advantage of by demurrer or answer. See *Walker v. Locke*, 5 Cush. 90, 93.

As to plea of the Statute of Limitations, in case of a bill for an account, see *Forbes v. Skelton*, 8 Sim. 335; *Inglis v. Haigh*, 8 Mees. & W. 769; *Cottam v. Partridge*, 4 Scott, N. R. 819. In case of a bill of foreclosure and plea of 3 & 4 Will. 4, c. 27, § 40, see *Dearman v. Wyche*, 9 Sim. 573, and for form of plea and answer, *id.* 579.

As to plea of purchase for valuable consideration, see *Pennington v. Beechey*, 2 Sim. & St. 282; *Jackson v. Rowe*, 5 Russ. 514; S. C. 2 Sim. & St. 472; *Lord Portarlington v. Soulby*, 6 Sim. 356.

As to plea being supported by an answer, see *ante*, Vol. I. p. 614; *Sanders v. King*, 6 Mad. 61; *Emerson v. Harland*, 3 Sim. 490; 2 Cl & Fin. 10; *Foley v. Hill*, 3 Myl. & Cr. 475; *Denys v. Locock*, *id.* 205.

As to pleading double, see *Kay v. Marshall*, 1 Keen, 190.

bill was, and now is, an enemy to our said lord the King, and entered into these dominions without the safe-conduct of our said lord the King, and has not been made a subject of our said lord the King by naturalization, denization, or otherwise. Therefore, &c. [Conclude as above.]

5. Plea of infancy to a bill exhibited without a prochein ami.

[Title and commencement as before.]

That the said plaintiff, before and at the time of filing his said bill in which he appears as the sole plaintiff, was, and now is, an infant under the age of twenty-one years; that is to say, of the age of — or thereabouts. Therefore, &c. [Conclude as above.]

6. Plea of coverture of the plaintiff.

[Title and commencement as before.]

That the said plaintiff A. B., before and at the time of exhibiting her said bill, was, and now is, under coverture of one C. D., her husband, who is still living, and in every respect capable, if necessary, of instituting any suit at Law or in Equity in this —, on her behalf. Therefore, &c. [Conclude as before.]

7. Plea of lunacy.

[Title and commencement as before.]

That the said plaintiff, who by himself alone attempts to sustain an injunction in this suit, before and at the time of filing his said bill, was duly found and declared to be a lunatic, under and by virtue of a commission of lunacy, duly awarded and issued against him, as by the inquisition thereon (a true copy whereof is now in this defendant's possession, and ready to be produced to this honorable Court), to which this defendant craves leave to refer, will more fully appear; and which said commission has not hitherto been superseded, and still remains in full force and effect; and the said A. B. therein named, and the said plaintiff is, as this defendant avers, one and the same person, and are not other and different persons. Therefore, &c. [Conclude as above.]

* 2097 * II. THAT THE PLAINTIFF IS NOT THE PERSON HE PRETENDS TO BE, OR DOES NOT SUSTAIN THE CHARACTER HE ASSUMES.¹

8. Plea that the supposed intestate is living, to a bill where the plaintiff entitled himself as administrator.

[Title and commencement as before.]

That the said A. S., in the said bill named (to whom the said plaintiff alleges that he has obtained letters of administration, and by virtue of

¹ See Carter v. Treadwell, 3 Story, 42, 43.

which letters of administration, and also under the pretence of his being the heir-at-law of the said A. S., the said plaintiff has commenced and prosecuted this suit), was at the time the said plaintiff filed his said bill, and still is, alive at Paris, in the Kingdom of France. Therefore this defendant demands the judgment of this honorable Court, whether he shall be compelled to answer the plaintiff's bill; and humbly prays to be dismissed with his reasonable costs on this behalf sustained.

9. Plea that plaintiff is not administrator, as he alleges himself to be, of a person deceased.

[*Title, &c., as before.*]

These defendants, by protestation, &c., to the matter in said bill contained, and to so much thereof as sets forth that said E. C. is the administrator of the estate of said S. R. A., and to so much thereof as relates to any contract of purchase between said S. R. A. and these defendants, and seeks to have such contract rescinded, and prays for relief in the premises, and that these defendants may be required to refund to said E. C. all the money paid by S. R. A. upon the said purchase, and that the notes given in payment therefor may be given up to be cancelled, and that the plaintiff may be repaid all damages and expenses which said S. R. A. may have suffered by reason of the premises, do thereunto plead, and for plea say, that said E. C. is not administrator as in the bill mentioned, or the legal representative of said S. R. A., duly appointed and qualified to act as therein set forth. All which matters and things these defendants aver to be true, and plead the same to so much of said bill as aforesaid, and pray judgment of this honorable Court, whether they ought to be required to make any other or further answer thereunto.

*** III. THAT THE DEFENDANT HAS NOT AN INTEREST IN THE SUBJECT THAT CAN MAKE HIM LIABLE TO DEMANDS OF THE PLAINTIFF.** * 2098.

10. Plea that the defendant has no interest in the subject of the suit.

[*Title and commencement as above.*]

As to so much of and such parts of the plaintiff's bill as charges that this defendant is interested in the personal estate of A. B., the testator in the said bill named, and seeks an account of the said testator's personal estate; this defendant pleads thereto, and for plea saith, that he is merely a subscribing witness to said testator's will, and in no wise interested therein; and this defendant avers that he has not, nor ever had, or pretended to have, nor does he nor did he ever claim any right, title, or interest whatsoever in the personal estate of the said testator, or any part thereof, and that the said plaintiff has no right to institute this, or any other suit against him in respect thereof. All which said matters and things this defendant doth aver and plead in bar to so much

of the said plaintiff's bill as hereinbefore particularly mentioned and pleaded to. And this defendant, not waiving his said plea, but relying thereon, and for better supporting the same, for answer to so much of the said bill as aforesaid, saith he denies that he now is, or ever was, interested in the personal estate of the said testator or any part thereof.

IV. THAT THE DEFENDANT IS NOT THE PERSON HE IS ALLEGED TO BE, OR DOES NOT SUSTAIN THE CHARACTER HE IS ALLEGED TO HAVE.

11. Plea that the defendant never was administrator.

[Title and commencement as above.]

That he is not, nor ever has been, administrator of the goods or estate which were of the said E. F., deceased, in the said bill named, as the said plaintiff in his said bill has untruly alleged. Therefore, &c.
[Conclude as above.]

12. Plea to a bill of revivor against the administrators of the original defendant, deceased, that the defendant never was appointed executor or administrator of the deceased in the State where the suit is sought to be revived against him as such.

[Title and commencement as before.]

That the said W. D. M. H. [the original defendant], at the time of his decease, was a citizen of and resident in the State of C., and that * 2099 * his last will and testament was duly proved and allowed in the county of S. F., in the said State of C.; and that this defendant was named as one of the executors thereof, and duly appointed as such by the said Court of Probate, and that this defendant has not been appointed an executor of the said will, or an administrator upon the estate of the said W. D. M. H., by any Court of Probate or other Court in the State of M.; that at the time when service of the plaintiff's bill was made upon him, he was, and has since continued to be, a citizen of the said State of C.; that he was then casually within said State of M., and for a temporary purpose only, and at that time had no assets of the estate of the said W. D. M. H. in his possession or under his control. All which matters and things this defendant doth aver to be true, and pleads the same to the said bill of revivor, and demands the judgment of this honorable Court whether he ought to be compelled to make any answer thereto, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

H. F. T.

[Jurat.]

[Held a good plea in Mellus v. Thompson et al., U. States C. Court, for Mass., 1857.]¹

¹ See Beaman v. Elliot, 10 Cush. 172.

PLEAS IN BAR.

V. THAT FOR SOME REASON, FOUNDED ON THE SUBSTANCE OF THE CASE,
THE PLAINTIFF IS NOT ENTITLED TO RELIEF.

13. *Plea of a decree, as of record in a Court of Equity.*

[*Title and commencement as above.]*

As to so much and such part of the said plaintiff's bill as seeks to compel this defendant either to admit assets of his late father I. M., deceased, come to his hands, sufficient to answer and satisfy the said plaintiff's demand in the said bill mentioned, or to set forth a full and perfect inventory and account of all the personal estate of his this defendant's said father, come to the hands of this defendant, or to the hands of any other person or persons for his use, with the nature, kind, and value thereof, and of every part thereof, and of all sums of money come to the hands of this defendant, or any other person or persons for his use, for or on account of the real estates of this defendant's said father, or the rents or profits thereof (charged with the several legacies in the said testator's will, and in the said bill also mentioned * to * 2100 be given and bequeathed to and for the younger children of the said testator in the said will, and in the said bill also respectively named); and also to set forth the annual value of such real estates; or that this defendant may thereout pay to the said plaintiff the sum of \$ —, in the said plaintiff's bill mentioned, with interest for the same, from the time of the said testator's death; this defendant doth plead thereto, and for plea saith, that at the term of — in the year —, M. M., since deceased, together with P. M., deceased, and late the wife of the said plaintiff, and S. M. and H. M. respectively, infants, by the said M. M., their sister and next friend (and which said M. M., P. M., the said plaintiff's late wife, S. M., and H. M. were the daughters and younger son of the testator I. M., all since deceased), exhibited their bill of complaint in this honorable Court, against E. P. and R. T., Esqs. (both since deceased), and this defendant, as eldest son and heir-at-law of the said testator I. M. thereby stating, &c., &c., and praying that the legacies given and bequeathed by the said testator in and by his said will, to the said plaintiff M. M., as one of the younger children, might be paid, and the legacies or shares of the rest of such younger children, all of whom were infants, might be properly secured for their benefit, and a suitable allowance made thereout for their maintenance and education during their respective minorities, to which said bill this defendant, who was then an infant, put in his answer by A. B., his guardian, and the said other defendants respectively also put in their answers thereto, and submitted to this honorable Court what right and interest the said plaintiff M. M. was entitled to under her said father's will, and the said cause afterwards and on or about the — day of — came on to be heard, and a decree was then pronounced therein whereby it was referred to C. D., Esq., then one of the Masters

of this honorable Court, to take an account of certain stock, which the said testator by his said will had given and bequeathed among and to his children, and the usual accounts of personal estate, funeral and testamentary expenses, and debts of the said testator, and an account of the rents and profits of the said testator's real estates were thereby directed, and which said decree was afterwards, and on or about —, duly signed and enrolled; and the said Master afterwards, in pursuance of the said decree, took the said accounts, and by his report, bearing date the — day of —, which was afterwards confirmed, stated, &c. [*all that was done by the Master*], and the said share so reported due to the said P. M., since deceased, was afterwards, in pursuance of an order of this honorable Court, since her marriage with the said plaintiff in the present suit, on or about — day of —, duly assigned and transferred to, and accepted by him, in full satisfaction and discharge of all the right and interest which his said wife, or the said plaintiff

in this suit in her right, or either of them, had, or could have,

* 2101 in or to the personal * estate of the said testator, or any part thereof; all of which matters and things this defendant doth aver and plead in bar to so much of the said plaintiff's bill as hereinbefore particularly mentioned; and prays judgment of this honorable Court whether he should make any further answer to so much of the said bill as is hereinbefore pleaded to.

14. Plea of former suit depending.¹

[Title and commencement as above.]

That at a term of the — Court —, which was held in the year —, the said present plaintiff exhibited his bill of complaint in this honorable Court against this defendant and one L. Y. for an account of the moneys raised by the sale of the plantations and other estates in the said plaintiff's present bill mentioned, and claiming such shares and proportions thereof, and such rights and interests therein, as he now claims by his present bill; and praying relief against this defendant in the same manner, and for the same matters, and to the same effect as the said plaintiff now prays by his said present bill; and this defendant and the said L. Y. appeared and put in their answer to the said former bill, and the said plaintiff replied thereto, and witnesses were examined on both sides, and their depositions duly published, and the said former bill and the several proceedings in the said former cause, as this defendant avers, now remain depending, and as of record in this honorable Court, the said cause being yet undetermined and undismissed; all which several matters and things this defendant doth aver, and

¹ See Jenkins v. Eldredge, 3 Story, 181. If a former judgment of a court of general jurisdiction is pleaded in bar, the plea is not bad if it does not aver service of process upon or appearance by the defendant, as the presumption is that the court had jurisdiction of the subject-matter and of the parties. Lynde v. Columbus &c. Ry. Co. 57 Fed. Rep. 998.

An estoppel *in pais*, although it need not be pleaded in an action at Law, must yet be pleaded in Equity when it is the basis of a right to relief or of defence. Dean v. Crall (Mich.), 38 Cent. L. J. 450.

pleads the said former bill, answer, and the several proceedings in the said former suit in bar to the said plaintiff's present bill; and humbly demands the judgment of this honorable Court, whether he shall be put to make any further or other answer thereto; and prays to be hence dismissed with his costs and charges in this behalf sustained.

VI. PLEAS IN BAR, OF MATTER IN PAIS.

15. *Plea of stated account.*

[*Title and commencement as above.*]

As to so much and such parts of the said plaintiff's bill as seeks an account of and concerning the dealings and transactions therein alleged to have taken place between the said plaintiff and this defendant, at *any time before the — day of —, in the year —, * 2102 this defendant for plea thereto saith, that on the — day of —, which was previously to the said bill of complaint being filed, the said plaintiff and this defendant did make up, state, and settle an account in *writing*, a counterpart whereof was then delivered to the said plaintiff, of all sums of money which this defendant had before that time, by the order and direction, and for the use of the said plaintiff received, and of all matters and things thereunto relating, or at any time before the said — day of —, being or depending between the said plaintiff and this defendant (and in respect whereof the said plaintiff's bill of complaint has been since filed), and the said plaintiff, after a strict examination of the said account, and every item and particular thereof, which this defendant avers according to his best knowledge and belief to be true and just, did approve and allow the same, and actually received from this defendant the sum of \$ —, the balance of the said account, which by the said account appeared to be justly due to him from this defendant; and the said plaintiff thereupon, and on the — day of —, gave to this defendant a receipt, or acquittance for the same, under his hand, in full of all demands, and which said receipt or acquittance is in the words and figures following (that is to say), [*here state the receipt verbatim*], as by the said receipt or acquittance, now in the possession of this defendant, and ready to be produced to this honorable Court, will appear. Therefore, &c. [Conclude as above.]

16. *Conclusion of plea of release.*

Therefore this defendant pleads the said release in bar to so much of the said plaintiff's bill as is hereinbefore particularly mentioned, and humbly prays the judgment of this honorable Court, whether he ought to be compelled to make any further answer to so much of the said bill as is before pleaded unto; and this defendant, not waiving the said plea, but insisting thereon for answer to the residue of the said bill, and in support of his said plea saith, he denies that the said release was unduly obtained by this defendant from the said plaintiff, or that the said plaintiff was ignorant of the nature and effect of such release,

or that the consideration paid by this defendant to induce the said plaintiff to execute the same, was at all inadequate to the just claims and demands of the said plaintiff against this defendant, in respect of the several dealings and transactions in the said bill mentioned, or any of them; and this defendant denies, &c.

* 2103

* 17. *Plea of a will.*[*Title and commencement as above.*]

As to so much and such part of the plaintiff's bill as seeks [*that a Receiver may be forthwith appointed to Receive the rents and profits of the real estates, late of John Thompson, deceased, in the said bill named, and now in the possession of this defendant*], and that this defendant may account with the said plaintiff for the rents and profits thereof, and that this defendant may be restrained by the order and injunction of this honorable Court from felling, &c., timber, &c., growing thereon, or which seeks to set aside the will of the said John Thompson, or which seeks any relief relative thereto, this defendant doth plead thereto, and for plea saith, that the said John Thompson being before, and at the time of making his will, seised to him and his heirs, of and in divers parcels of real estate, in the several counties of —, of the yearly value of \$ —, or thereabouts, and being of sound mind, memory, and understanding, duly made and published his last will and testament in writing, bearing date the — day of —, which was duly executed and attested, and thereby gave, &c. [*setting forth the will, under which the defendant had an estate for life in the testator's real estate, with remainder, &c., and that the testator appointed the defendant executor of his said will*], and the said John Thompson being so seised or entitled as aforesaid died on the — day of —, without having altered or revoked his said will; and this defendant, soon after the death of the said testator, entered on the said real estates devised to him in manner aforesaid, and has ever since been in the enjoyment or receipt of the rents and profits thereof. Therefore, &c. [*Conclude as above.*]

18. *Circumstances bringing a case within the protection of a statute; viz., the Statute of Limitations or the Statute of Frauds.¹*[*Title and commencement as above.*]

As to so much of the bill as seeks an account and discovery of the estate and effects of H. C., Esq., deceased, this defendant's testator, or that seeks a satisfaction for, or in respect of, any money received by the said H. C., for or on account of I. G., in the said bill named, or for or on account of the said plaintiff; or that seeks a discovery of how many hogsheads of tobacco or rice, or any other commodities pre-

¹ If the want of a writing, where one is required by statute, appears on the face of a bill, the objection may be taken by demurrer. Walker v. Locke, 5 Cush. 90; Slack v. Black, 109 Mass. 496.

tended to have been consigned to the said H. C., or that seeks a satisfaction for the same; or that seeks a discovery or satisfaction for any of the money, goods, or effects of the said I. G., come to the hands of this * defendant, since the decease of the said H. C.; * 2104 this defendant pleads thereto, and for plea saith, that the said I. G., under whom this defendant claims, departed this life in or about the year —, and that the said H. C., this defendant's testator, afterwards also departed this life, in the month of —, in the year —, and that the matters and effects pretended to have been received by the said H. C., or by this defendant, and the goods and commodities pretended to have been consigned (if any sums of money, goods, or effects were received by the said H. C., or by this defendant, which this defendant does not admit), were received by the said H. C., or by this defendant, above six years before this defendant was served with any process of this honorable Court, to answer the said bill, or any process whatsoever was sued against this defendant to account for the same; and that if the said plaintiff had any cause of action or suit against this defendant, or against the said H. C. for or concerning any of the said matters, which this defendant does not admit, that such cause of action or suit did not accrue or arise within six years before the said bill was filed, or this defendant served with process; nor did this defendant, or his testator, at any time within six years before the said bill was exhibited, or process sued out against this defendant, promise or agree to come to any account, or to make satisfaction, or to pay any sum or sums of money, for or by reason of any of the said matters; and that by a certain act of — for the limitation of actions and suits at Law, it was enacted, &c. [*state the statute to be pleaded*], and this defendant pleads the several matters aforesaid in bar to so much of the plaintiff's said demand as aforesaid, and prays the judgment of this honorable Court thereon; and this defendant for answer, &c.

VII. THAT SUPPOSING THE PLAINTIFF ENTITLED TO THE ASSISTANCE OF THE COURT TO ASSERT A RIGHT, THE DEFENDANT IS EQUALLY ENTITLED TO THE PROTECTION OF THE COURT TO DEFEND HIS POSSESSION.

19. Plea of purchase for a valuable consideration, without notice.

This defendant by protestation, &c. [*title and commencement as above*], as to so much of the said bill as seeks an account of what is due and owing to the said plaintiff, in respect of the annuity of \$ — therein mentioned, and stated to be charged upon, and issuing out of the premises therein and hereinafter mentioned, this defendant doth plead thereto, and for plea saith that A. B., previously to and on the — day of —, 18—, was, or pretended to be, seised in fee-simple, and was in, or pretended to be in, the actual possession of all those * parcels of real estate in the said bill mentioned and described, * 2105 free from all incumbrances whatsoever; and this defendant, believing that the said A. B. was so seised and entitled, and that the

said premises were in fact free from all incumbrances, on the — day of —, agreed with the said A. B. for the absolute purchase of the fee-simple, and inheritance thereof; whereupon certain indentures of lease and release, bearing date respectively on, &c., between the said A. B. of the one part, and this defendant of the other part, were duly made and executed; and by the said indenture of release the said A. B., in consideration of the sum of \$ — paid to him by this defendant, bargained, sold, released, and confirmed unto this defendant, all, &c. [*set out the parcels verbatim from the deed*], to hold unto, and to the use of this defendant, his heirs and assigns, forever; and in the said indenture of release is contained a covenant from the said A. B. with this defendant, that he, the said A. B., was absolutely seised of the said premises, and that the same and each of them and every part thereof were and was free from all incumbrances; as by the said indentures of lease and release respectively, reference being thereto had, will more fully appear; and this defendant doth aver, that the said sum of \$ —, the consideration money in said indenture of release mentioned, was actually paid by this defendant to the said A. B. at the time the said indenture of release bears date; and this defendant doth also aver, that at or before the respective times of the execution of the said indentures of lease and release, by the said A. B. and this defendant, and of the payment of the said purchase-money, he, this defendant, had no notice whatsoever of the said annuity of \$ —, now claimed by the said plaintiff, or of any other incumbrance whatsoever, that in any wise affected the said premises, so purchased by this defendant as aforesaid, or any of them, or any part thereof; and this defendant insists that he is a *bona fide* purchaser of the said premises for a good and valuable consideration, and without notice of the said annuity claimed by the plaintiff; all which matters and things this defendant doth aver and plead in bar to so much of the said plaintiff's bill as is hereinbefore particularly mentioned; and prays the judgment of this honorable Court, whether he should make any further answer to so much of the said bill as is hereinbefore pleaded to; and this defendant not waiving his said plea, but relying thereon, and for better supporting the same, for answer saith, that he had not at any time before, or at the time of purchasing the said premises, or since, until the said plaintiff's bill was filed, any notice whatsoever, either expressed or implied, of the said annuity of \$ —, claimed by the said plaintiff, or that the same or any other incumbrance whatsoever was charged upon or in any wise affected the said premises so purchased as aforesaid, or any of them, or any part thereof; and this defendant denies, &c.

* 20. *A form of plea of purchaser for valuable consideration, &c., * 2106 prescribed by Chancery Rules of New Hampshire.*

IN THE SUPREME JUDICIAL COURT.

H —, ss.

T. P. v. T. D. & another.
The plea of T. M.

The said T. M. says that on the — day of —, 18—, he loaned to said T. D. the sum of \$600, and the said T. D., to secure the payment thereof, made and executed to him his promissory note of that date for \$600, and interest, in one year, and executed and delivered to him a good and sufficient deed of mortgage of said premises in said bill mentioned, with condition that if said T. D. should pay to this defendant said sum of \$600, and interest, in one year, the said deed should be void, as by the said deed duly executed, acknowledged, and recorded, and ready to be produced in said Court, appears.

And the said mortgage deed was duly recorded in the Registry of Deeds of said county of H., on the — day of —, 1850, and the alleged deed of mortgage made by said T. D. to the plaintiff was not left for record nor recorded in said Registry until the — day of —, 185—.

And this defendant avers that said sum of \$600 was paid by him to said T. D., in money, really and *bona fide*, and said deed of mortgage received and recorded, without notice of the plaintiff's pretended title set forth in the bill, and without any reason to believe or suspect that any such loan or mortgage of said premises to the plaintiff had been made.

T. M., by
A. D. his Solicitor.

VIII. THAT THE BILL IS DEFICIENT TO ANSWER THE PURPOSES OF COMPLETE JUSTICE.

21. *Plea of want of proper parties.*

[*Title and commencement.*]

As to so much of the said plaintiff's bill as seeks an account from this defendant, as executor and heir-at-law of H. E., Esq., deceased, in the said bill named, this defendant's late brother, for what remains due and owing upon the bond in the said bill mentioned, bearing date the — day of —, in the year —, and payment by this defendant as such executor and heir-at-law of the said H. E., deceased, as aforesaid, of what shall be found due on taking such account; this defendant * doth plead thereto, and for plea saith, that no part * 2107 of the sum of \$ — for securing the repayment whereof the said bond was executed, was paid to or received by the said H. E., but

that the whole was paid unto A. W., in the said bond and in the said bill also named and received by him for his sole use, and that the said H. E. was only surety for the said A. W., and that the said plaintiff afterwards accepted a composition for what he alleged to be due on said bond from the said A. W. without the privity of the said H. E. in his lifetime, or this defendant since the death of the said H. E., which took place on or about the — day of —, as in the said bill mentioned, since which no demand has been made on this defendant for any money alleged to be due on the said bond; and that the said A. W. died several years ago, seised of considerable real estates, and also possessed of a large personal estate; and that his heir-at-law, or the devisee of his real estate, and also the representative of his personal estate, ought to be, but are not, made parties to the said bill. Therefore, &c. [Conclude as above].

IX. THAT THE SITUATION OF THE DEFENDANT RENDERS IT IMPROPER FOR A COURT OF EQUITY TO COMPEL A DISCOVERY.

22. *Plea that the discovery sought by the bill would betray the confidence reposed in the defendant as an attorney.*

[Title and commencement as above.]

As to so much and such part of the said bill as seeks a discovery from this defendant of the title of W. W., Esq., another defendant in the said bill named, to all or any of the messuages, lands, &c., late of C. W., Esq., his late grandfather, deceased, in the said bill also named, this defendant doth plead thereto, and for plea saith, that he, this defendant, is duly admitted and sworn an attorney of —, and also a solicitor of this honorable Court, and has for several years past practised, and now practises as such; and this defendant was employed by C. W., Esq., deceased, the late father of the said other defendant W. W., in the lifetime of the said C. W., and since his decease has also been employed in that capacity by the said other defendant J. W., the mother and guardian of the said W. W., during his minority, and by the said W. W. since he attained his age of twenty-one years; and in that capacity only, or by means of such employment only, has had the inspection and perusal of any of the title deeds of and belonging to the said estate, or any part or parts thereof, for the use and service of his said clients, and therefore ought not, as this defendant is

* 2108 advised, * to be compelled to discover the same. Wherefore this defendant doth plead the several matters aforesaid, in bar to such discovery as aforesaid is sought by the said bill, and humbly prays the judgment of this honorable Court, whether he is bound to make any further or other answer thereto.

X. PLEAS TO BILLS NOT ORIGINAL.**23. Plea to a bill of revivor.**

[*Title and commencement as above.*]

That the said plaintiff is not, as stated in the said bill of revivor, the personal representative of A. B., deceased, the testator therein named, and as such entitled to revive the said suit in the said bill of revivor mentioned against this defendant; but the said plaintiff is the administrator only of C. D., late of, &c., deceased, who died intestate on the — day of — last, and was the sole executor of the said A. B.; and that letters of administration of the goods and estate of the said A. B., unadministered by the said C. D. in his lifetime, have, since the death of the said C. D., been duly granted by the proper Court to E. F., of, &c., who thereby became, and now is, the legal personal representative of the said A. B. Wherefore the said defendant demands the judgment of this honorable Court, whether he shall be compelled to answer the said plaintiff's bill, and humbly prays to be dismissed with his reasonable costs in this behalf sustained.

24. Plea to a supplemental bill.

[*Title and commencement as above.*]

That the said matters and things in the said plaintiff's present bill, stated and set forth by way of supplement, arose, and were well known to the said plaintiff, before and at the time the said plaintiff filed his original bill in this cause, and that such said several matters and things can now be introduced, and ought so to be, if necessary, by amending said original bill. Wherefore, &c.

* CHAPTER IX.

ANSWERS.

I. FORMS OF COMMENCEMENT AND CONCLUSION OF ANSWERS.

1. *Commencement.*

The title of a defence by answer to a suit in Chancery.

THE answer of —, the defendant [or, one of the defendants], or, the joint and several answers of —, the defendants [or, two of the defendants], to the bill of complaint of —, plaintiffs.

By an infant.

The answer of C. D., an infant under the age of twenty-one years, by L. M., his guardian, defendant [or, one of the defendants], to the bill of complaint of A. B., plaintiff.

By husband and wife.

The joint answer of A. B. and M. his wife, defendants, to the bill of complaint of A. B., the plaintiff.

Or,

The joint answer of A. B. and C. his wife, the [or, two of the] above-named defendants, to the bill, &c. [or, if they were married since she was made a defendant, say]: The joint answer of A. B. and C. his wife, lately, and in the bill called, C. D., spinster [or, widow], to the will, &c.

In answer to the said bill, we, A. B. and C. his wife, say as follows: —

Wife separately under an order.

The answer of C. B., one of the above-named defendants, and the wife of [the defendant] A. B., to the bill, &c.

In answer to the said bill, I, C. B., answering separately from my husband, in pursuance of an order of this honorable Court, dated the — day of —, 18—, authorizing me so to do, say as follows: —

By a lunatic or idiot, &c.

The joint answer of E. F., a lunatic [or, *idiot or imbecile person*], by T. P., his guardian *ad litem*, and T. P., committee of the said E. F., defendants, to the bill of complaint of A. B., the plaintiff.

* *Where the bill misstates the names of defendants.* * 2110

The joint and several answer of J. L., in the bill called R. L., and of C. E., in the bill called D. E., defendants, to the bill of complaint of A. B., plaintiff.

2. *Introduction, or words of course, preceding an answer.*

This defendant [or, these defendants respectively], now and at all times hereafter saving to himself [or, themselves] all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is [or, these defendants are] advised it is material or necessary for him [or, them] to make answer to, answering saith [or, severally answering say].

By a formal party who is a stranger to the facts.] This defendant saving and reserving to himself, &c. (*as above*), answers and says, that he is a stranger to all and singular the matters and things in the said plaintiff's bill of complaint contained, and therefore leaves the plaintiff to make such proof thereof as he shall be able to produce; without this, that, &c.

By an infant.] This defendant, answering by his said guardian, saith that he is an infant of the age of — years or thereabouts, and he therefore submits his rights and interests in the matters in question in this cause to the protection of this honorable Court; without this, that, &c.

3. *Conclusion of answers.*

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided. Or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable Court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges, in this behalf most wrongfully sustained.

Where party claims the same benefit of defence as if the bill had been demurred to for want of Equity.] And this defendant submits to this honorable Court, that all and every of the matters in said plaintiff's * bill mentioned and complained of are matters which may be tried and determined at Law, and with respect to which the said plaintiff is not entitled to any relief from a Court of Equity, and this defendant hopes he shall have the same benefit of this defence as if he had demurred to the said plaintiff's bill. And this defendant denies, &c.

Another form.] I submit that the plaintiffs have not, on their bill, shown any case in Equity, or case entitling them to proceed against me in this honorable Court; and I pray all such benefit as if I had demurred to the said bill.

4. *Model form of answer in England.¹*

In Chancery.

A. B. Plaintiff,
and

C. D. [and E. F.] Defendants.

Commencement.] The answer of C. D., one of the above-named defendants [*or, the above-named defendant, as the case may be*], to the bill of complaint [*or, the amended bill of complaint, or, to the supplemental bill of complaint, or, to the original bill of complaint, and also to the supplemental bill of complaint*] of the above-named plaintiff.

In answer to the said bill, I, C. D., say as follows: —

1. I admit that the indenture of the fourteenth day of May, 1854, in the plaintiff's bill mentioned, was made and executed between and by the several parties, and was to the purport and effect in the said bill set forth, but I crave leave to refer to the said indenture when the same shall be produced to this honorable Court.

2. I believe that such representations as set forth in the ____ of the interrogatories to the plaintiff's bill were made by ____ therein mentioned.

3. I deny that I did on the ____ day of ____, or at any other time, state, &c.

4. [*A statement of circumstances varying from the statement thereof in the plaintiff's bill.*]

5. Save as aforesaid, I deny, &c. [*here the allegations in the plaintiff's bill are denied*].

Or,

6. Save as aforesaid, I am unable to set forth as to my knowledge, remembrance, information, or belief, whether, &c.

7. I claim, &c. [*a statement of the defendant's claim or case*].

[*Counsel's signature.*]
Sworn, &c.

¹ The answer of a defendant in England must now be in the first person, and divided into paragraphs numbered consecutively, each paragraph containing as nearly as may be a separate and distinct allegation. 15 & 16 Vic. c. 86, § 14, and Orders of 7th August, 1852.

* 5. *Answer of an infant.*

* 2112

[Title of cause.]

The answer of A. B., one of the above-named defendants, an infant under the age of twenty-one years, by —, his guardian.

In answer to the said bill, I, A. B., by —, my guardian, say as follows:—

I am an infant under the age of twenty-one years, that is to say, of the age of — years, and I submit my rights and interests in the matters in question in this cause to the care and protection of this honorable Court.

(Counsel's signature.)

6. *Answer of adults and infants.*

The joint and several answer of A. B. and C. D., and of E. F. and G. H., infants, the above-named defendants [or, four of the above-named defendants], by —, their guardian.

7. *In case of an insufficient answer.*

The further answer of —, one of the above-named defendants, to the bill of complaint of the above-named plaintiff.

8. *Further answer to original bill, and answer to amended bill.*

The further answer of —, one, &c., to the original bill of complaint of the above-named plaintiff, and the answer of the said defendant to the amended bill of complaint of the plaintiff.

9. *Answer to original bill and bill of revivor and supplement.*

The answer of —, one, &c., to the original bill of complaint of —, the above-named plaintiff, and —, also to the bill of revivor and supplement of the said plaintiff.

In answer to the said original bill, I, —, say as follows, &c.

In answer to the said bill of revivor and supplement, I, — say as follows, &c.

10. *Answer of lunatic and his committee.*

The joint and several answer of A. B., a lunatic, by C. D., his [guardian and] committee, and the said C. D., two of the above-named defendants, to the bill of complaint of the above-named plaintiff.

* 11. *Statement in answer by husband disclaiming any interest in legacy bequeathed to his wife.* * 2113

I have long been separated from my wife, and I disclaim all right, title, and interest in or to the said legacy or sum of \$—, so bequeathed to my said wife A. S., for her separate use by the will of the said —, as in the said bill mentioned, and every part thereof.

12. Statement in answer of a feme covert separated from her husband.

I have long been separated from my husband, and I humbly submit that I ought to be allowed all the costs, charges, and expenses incurred by me in putting in my answer to the said bill of complaint and in other the proceedings in this suit.¹

13. Answer and disclaimer.²

[*Title and commencement as before.*]

I have never received any part of the estate or effects of the testator, or in any wise intermeddled therein, and I have never assented to or in any manner accepted the said devise made to me by the said will jointly with the said —, and I have never in any manner consented to become a trustee of the said will or in any manner acted or interfered in the trusts thereof; and, in fact, I have at all times refused to accept, and do now refuse to accept, the office of trustee of the said will; and I have always disclaimed, and do hereby disclaim and renounce the said devise made to me by the said will, and all and singular the estates and property which could or might pass under or by virtue thereof, and all estate and interest therein, and also the trusts of the said will and the office or duty of executing the same.

***2114 * 14. Where a defendant objects to answer particular interrogatories.**

As to the several interrogatories numbered 18, &c., and as to such of the other interrogatories [*or, parts of interrogatories*] (if any) as I may not have answered, I am advised and humbly submit that I am not bound to answer the same, and I therefore decline to answer the said interrogatories [*and parts of interrogatories*]; and I claim the same benefit of the objection as if I had demurred to the same or to the discovery sought thereby.¹

And I also humbly submit that the plaintiffs are not entitled in this suit to the relief sought in and by the third, &c., paragraphs of the

¹ An order must be obtained for a married woman to answer separately from her husband. *Ante*, Vol. I. pp. 180, 181, 182, 498, 499.

² General form of Disclaimer.—In Chancery. Between (*set out the full title of cause*).

The answer and disclaimer of A. B., the above-named defendant [*or, one of the above-named defendants*], to the bill of complaint of the above-named plaintiff.

Or,

The joint and several answer and disclaimer of A. B. and C. D., the [*or, two of the*] above-named defendants, to the bill of complaint of the above-named plaintiff. In answer to the said bill, I, A. B. [*or, we, A. B. and C. D.*], say as follows:—

“I [*or, we*] have not, and do not claim, and never had or claimed to have, any right or

interest in any of the matters in question in this suit, and I [*or, we*] disclaim all right, title, and interest, legal and equitable in any of the said matters; and I [*or, we*] say that if I [*or, we*] had been applied to by the plaintiff before the filing of his bill, I [*or, we*] should have disclaimed all such right, title, and interest; and I [*or, we*] submit that the bill ought to be dismissed as against me [*or, us*] with costs. (*Name of Counsel*).”

The disclaimer should be signed by counsel and by the defendant.

¹ *Ante*, Vol. I. pp. 720, 721; *Mason v. Wakeman*. ² *Phil.* 516; *Swinborne v. Nelson*, 16 *Beav.* 416; *Bates v. Christ's College, Cambridge*, 5 *W. R.* 337..

prayer of the supplemental bill, or for the purposes thereof to have any accounts, directions, or inquiries taken, given, or made; and I claim the same benefit of the objection as if I had demurred to the relief so sought.

15. Statement in answer to prevent plaintiff from calling for the production of documents in defendant's possession.

I have now in my possession or power the several letters, papers, and writings, relating to the matters in the bill mentioned, or some of them; and I have in the schedule hereto, which I pray may be taken as part of this my answer, set forth a list or schedule of all the said letters, papers, and writings; but I deny that thereby or otherwise, if the same were produced,² the truth of the matters in the said bill mentioned, or any of them, would appear, further or otherwise, than as the same is herein-before admitted.

Such of the said letters, papers, and writings as are set forth in the first part of said schedule are of great importance to the claim made by me in my said action, and are or contain the evidence on which I am advised and intend mainly to rely at the trial of the said action; and the said letters, papers, and writings, as well those in the second and third parts as those in the first part of the said schedule, or any of them, do not nor does, as I am advised and verily believe, contain any evidence whatever in support of or tending to support the plaintiff's pleas in the said action, or any of such pleas, and are not, nor is, in any manner, material to the plaintiff's case.

As to confidential communications.] Such of the said letters, papers, and writings as are set forth in the second part of the said schedule were and are private^{*} and confidential communications between me * and my solicitors or legal advisers in the ordinary course * 2115 of professional business, and all and every of them relate to the matters in dispute between me and the plaintiff in the said action; and the plaintiff has not, as I am advised and verily believe, any right or title to the production of, or any interest whatever in, the letters, papers, and writings in the said schedule mentioned, or any of them.

16. Statement in an answer by mortgagees raising the defence of the Statute of Limitations.

The said G. S., deceased, did not, as we severally verily believe, at any time during the period he was so in possession or receipt of the rents and profits of the said mortgaged hereditaments as aforesaid, sign or give any acknowledgment in writing or otherwise, of the title of the said J. M. and T. M., or either of them, or of any person or persons claiming under them or either of them, to the said J. M. and T. M., or either of them, or to the plaintiffs in this suit or either of them, or to

² See Peile v. Stoddart, 1 M. & G. 192. In
Manby v. Bewicke, 2 Jur. N. S. 671.

³ See ante, Vol. I. pp. 570, 571,

the defendant W. T., or to any person or persons whatsoever claiming any estate or interest in the said hereditaments, or to the agent or agents of the said J. M. and T. M., or of the plaintiffs or of the defendant W. T., or either of them; nor have or hath one or either of us, at any time or times subsequently to the decease of the said G. S., signed or given any acknowledgment, &c. (*as above*).

The said J. M. and T. M. have not nor hath either of them, nor have or hath the plaintiffs or the defendant W. T., or any or either of them, made any payment whatever, either in respect of interest of the said several mortgage securities or any or either of them, or of the principal moneys thereby secured, or any part thereof, subsequently to the time when the said G. S., deceased, so entered into the possession or receipt of the rents and profits of the mortgaged hereditaments and premises as aforesaid.

We severally claim the benefit of the provision made in and by the statute passed in the session holden in the third and fourth years of the reign of his late Majesty, William the Fourth, "For the limitation of actions, and suits relating to real property, and for simplifying the remedies for trying the rights thereto," in bar to the relief sought by the plaintiffs in this suit, in the like manner as if we had pleaded the same.¹

* 2116 * 17. *Another form of answer of the Statute of Limitations.*

And the defendants, in addition to the foregoing answer, aver that the cause of action, if any there may be, arising to the plaintiffs on account or by reason of the several allegations and complaints in their said bill contained, did not accrue within six years before the said bill was filed, and this allegation the defendants make in bar of the plaintiffs' bill, and pray that they may have the same benefit therefrom as if they had formally pleaded the same.

18. *The like.*

I [or, we severally] claim the benefit of the provisions made in and by the Public Statutes of Massachusetts, c. 197 [or as the case may be], respecting the limitation of —— actions, and of all other Statutes of Limitation, in bar to the relief sought by the plaintiff in this suit, in the like manner as if I [or, we] had pleaded the same.

19. *Statement in answer of a trustee of acquiescence on the part of the cestui que trust to the application of the trust fund.*

I consented to sell the said —— Bank Annuities, and did sell the same, and paid and applied the produce thereof, at the special instance and request of the plaintiff [as well as of the defendant], in, &c.

¹ See *Jortin v. Southeastern Ry. Co.* 6 De G. M. & G. 270; 1 Jur. N. S. 433; *Staley v. Barrett*, 5 W. Rep. 188. The defendant who relies upon the Statute of Limitations as a defence to a bill must raise that defence by plea or

answer, although the plaintiff does not require an answer. *Holding v. Barton*, 1 Sm. & G. App. xxv. And see, upon the general principle that the defence must be made by the pleadings, *Sullivan v. Portland &c. R. Co.* 94 U. S. 806.

[Set forth the correspondence, documents, or admissions tending to establish this allegation.¹]

I claim to have the interest in the said —— applied in or towards satisfying any sum of money which I may be called upon or be bound to pay in respect of the said sale and application of the said trust fund.

20. An answer insisting on the benefit of the Statute of Frauds, as if it had been pleaded by the defendant.

[Title and commencement as above.]

That by a certain statute —— made and passed in the —— for the prevention of frauds and perjuries, and commonly called the Statute of Frauds, all contracts and agreements relating to lands, except as therein is excepted, are required to be reduced into writing, and signed by the party or parties to be bound thereby; and that the said agreement in the said bill mentioned, and therein alleged to have been made and * entered into by this defendant and the said plaintiff, was * 2117 not reduced into writing and executed pursuant to the said statute, and therefore this defendant insists that the same is void as against this defendant; and that he cannot be affected thereby, and this defendant claims the same benefit as if he had pleaded the same statute in this cause; and this defendant, for the reasons, and under the circumstances aforesaid, is advised, and insists, that the said plaintiff is not entitled to any relief against this defendant touching the matters complained of in the said bill. [Conclude as above.]

21. Another form of answer claiming the benefit of the Statute of Frauds.

I say that no agreement in writing for purchase of the said premises or any part thereof, nor any memorandum, or note thereof in writing, has been made, entered into, or signed by me or by any person thereunto by me lawfully authorized, and I claim the benefit of the statute passed in the twenty-ninth year of Charles the Second [or, of the Public Statutes of Massachusetts, c. 78], for the prevention of frauds and perjuries, in the same manner as if I had pleaded or demurred to the plaintiff's bill.¹

¹ If the *cestui que trust* joins with the trustee in that which is a breach of trust, knowing the circumstances, such *cestui que trust* can never complain of such breach of trust. Per Lord Eldon, in *Walker v. Symonds*, 3 Swanst. 64. And the interest of a *cestui que trust*, who concurs with a trustee in a breach of trust, is liable to indemnify the trustee. *Booth v. Booth*, 1 Beav. 125; *Farrar v. Barracough*, 2 Sm. & G. 231; *Lockhart v. Reilly*, 25 L. J. Ch. 697; *Baynard v. Woolley*, 20 Beav. 583; *Blythe v. Fladgate*, [1891] 1 Ch. 337.

¹ If a defendant does not insist by his answer upon the benefit of the Statute of Frauds, he cannot avail himself of its provisions at the hearing, although he denies the agreement set up by the bill. *Clifford v. Turrell*, 1 Y. & Coll. C. C. 138; see also *Baskett v. Cafe*, 4 De G. & S. 388; *Merritt v. Brown*, 21 N. J. Eq. 401. And see, where the answer denies the agreement, *Johns v. Norris*, 22 N. J. Eq. 109.

22. *Another more extended form.*

And this defendant sets forth, in answer to the several averments of contracts, agreements, promises, and trusts concerning the premises, with, to, or for the benefit of said plaintiff, in the said bill contained, and to so much of the said bill as sets forth any pretended contract, agreement, trust, or confidence between the said plaintiff and defendant, or as seeks any relief or discovery of this defendant of or concerning any pretended contract, agreement, trust, or confidence between this defendant and the plaintiff touching the said lands mentioned in said bill or any part thereof,— the Statute of Frauds, as enacted in the laws of the State [or, Commonwealth] of —— by the —— section of the —— chapter, and the —— section of the —— chapter, of the —— statutes.

And this defendant says, that neither he, nor any person by him lawfully authorized thereto, did ever make or sign any note or memorandum in writing [or (if so) any writing whatsoever] of or containing any such contract, promise, or agreement, or grant, or declaration [or (if so) any contract, promise, or agreement, or grant, or declara-

* 2118 * tion * whatsoever] with, to, or for the benefit of the said plaintiff, touching the said lands, or creating any estate or interest therein, or creating or declaring any trust respecting the same, in or for the benefit of the said plaintiff; and this defendant insists upon the said statutes and claims the same benefit therefrom as if he had pleaded the same.

23. *Form of answer prescribed by Chancery Rules in New Hampshire.**Answer.*

In the Supreme Judicial Court.

H—, ss.

T. P. v. T. D. & another.

The answer of T. A.

The said T. A. says said T. D., on the — day of —, 18—, was greatly in debt, beyond his means to pay, and for the purpose of delaying and defrauding his creditors, without any valuable consideration paid by said T. P., or received by said T. D., he did then make and deliver to said T. P. his promissory note of that date for the sum of \$1000, and interest, payable in one year, with interest, in said bill mentioned, and executed and delivered to said T. P. the said mortgage in said bill set forth.

On the — day of —, 18—, the said T. D. being then and long before justly indebted to this defendant in the sum of \$800, upon and by virtue of certain promissory notes theretofore, for a valuable and *bond fide* consideration, made and executed to him, this defendant became urgent for the payment of the same; and said T. D. then proposed to make and execute to this defendant a deed of conveyance of said premises in said bill described; and this defendant, having no notice of the said pretended mortgage, or reason to believe or suspect

the existence of the same, but being on friendly terms with the said T. P., did consult and advise with him relative to the purchasing of said T. D. the premises aforesaid, for said sum of eight hundred dollars which he now alleges to be greatly above the value thereof, and the said T. P., did then and there strongly recommend and advise this defendant to make the said purchase, and this defendant thereupon agreed to buy and did purchase said premises for eight hundred dollars, and took from T. D. a good and valid conveyance, as he is advised and believes, of said premises, and actually and in good faith paid the sum of eight hundred dollars, by giving up and surrendering to said T. D. his said notes without notice of the said title now by said T. P. in said bill set up.

T. A., by
Q. H., his Solicitor.

* COMMON FORMS OF STATEMENTS AND ALLEGATIONS IN ANSWERS. * 2119

24. *Accounts ; reference to book containing them.*

The dealings and transactions in respect of the said trade are entered in a large book, or ledger, kept on the premises at ----, and the items in respect thereof are contained in 164 pages, with double columns, of the said book ; and to set out such items in detail would occasion very great expense ; but we are willing, if the Court shall think proper so to direct, that the plaintiff or his solicitor should inspect the said book, and take extracts therefrom, at all reasonable times of the day.

25. *Accounts refused, as being useless before decree.*

And we say and submit, that it would only occasion great and useless expense were we in this our answer to set forth any further or fuller account of the rents and profits aforesaid ; and that the same ought to be taken, if at all, by and under the directions and decree of this honorable Court.

26. *Admission for purposes of the suit.¹*

We have no personal knowledge of the fact, but, for the purposes of the suit, we admit that, &c.

27. *Claims made by defendant.*

I claim to be interested in the matters of this suit, by virtue of, &c.

The short particulars of the mortgage now vested in us, and of our title thereto, are as follows, &c.

We claim to be equitable mortgagees of the hereditaments mentioned in the said bill, together with other hereditaments, under a memorandum in the words and figures following ; that is to say, &c.

¹ In Illinois, the plaintiff must prove all the material allegations of his bill which are neither admitted or denied in the answer. *Gloss v. Randolph*, 133 Ill. 197.

We claim a lien on the shares of, &c., for so much of the said debt as arises from the unpaid purchase-money of the same shares respectively, and the interest thereof.

28. Craving leave for greater certainty.

We admit that, &c. ; or, we believe that, &c. ; but, for greater certainty, we crave leave to refer to the said, &c., when produced.

29. Craving leave to refer to co-defendants' answer.

I know little or nothing respecting the deeds, dealings, and transactions stated in the said amended bill ; but I have seen a copy * 2120 of the *answer proposed to be forthwith put in to the amended bill by the defendants J. L. and G. W. F. ; and I have no doubt but that the statements contained in such answer are correct. However, for my greater certainty, as to the contents of deeds and other written documents, I crave leave to refer to such deeds or documents. Under the circumstances hereinbefore stated, and to avoid expense and prolixity, I abstain from answering, categorically, the interrogatories filed for the examination of the last-named defendants and myself in answer to the amended bill ; but if the plaintiffs so desire I am ready and willing to put in a full answer to the said amended bill.

30. Information and belief.¹

I have been informed and believe, that, &c.

I believe that, &c.

We have no reason to doubt, and therefore we believe that, &c.

We believe that the statements contained in the paragraphs numbered respectively from 1 to 8, both inclusive, of the plaintiff's bill of complaint are true, except in the particulars or respect hereinafter mentioned ; that is to say, &c.

I, this defendant W. R., say, and we, these other defendants, believe it to be true, that, &c.

We have no personal knowledge of the matters inquired after by the —— interrogatory filed in this cause ; but we have no reason to doubt, and therefore we believe, that, &c.

31. Ignorance.

I [or, we] do not know, and cannot set forth as to my [or, as to either of our] belief or otherwise, whether or not it is alleged or is the fact that, &c.

¹ A sworn answer on information and belief ness with corroborating circumstances. Snell raises an issue of fact requiring proof, but need v. Fewell, 64 Miss. 655. not be overcome by two witnesses or one wit-

32. Qualified denial.¹

Save as herein appears, it is not the fact, &c.

Save as herein appears [or, save as by the said schedule appears], I do not know, &c.

33. Reference to schedule.

I have in the — schedule hereto, and which I pray may be taken as part of this my answer, set forth, to the best of my knowledge, information, and belief, a description of, &c.

34. Release craving same benefit as if pleaded.

We submit and humbly insist, that the said release so executed as aforesaid, and the payment of the said sum of \$—, and the receipt * given for the same, is a full discharge; and we claim * 2121 the same benefit as if we had pleaded the same release. Nevertheless, we are willing and hereby submit, to account as this honorable Court may think fit.

35. Settled accounts: claim of.

The account so stated and settled was in fact stated and settled by the said A. B. and myself, as it purports to be, on the day of the date thereof; and I claim the benefit thereof as a settled account.

36. Submission by trustees to act.

We submit in all things to act as this honorable Court shall direct, and we claim to have our costs, charges, and expenses, properly incurred, paid out of the estate of the said testator.

37. Traverse.

The said J. S. died on the — day of —, and not on the — day of —, as in the second paragraph of the said bill erroneously stated; but save as aforesaid, we do not know, and are unable, as to our belief or otherwise, to set forth whether or not the statements, or some or one or which of the statements, contained in the paragraphs numbered respectively from 1 to 8, both inclusive, of the plaintiff's bill of complaint are or is true, or which of them are or is or in what respect untrue, or how otherwise.

38. Trustee; desire to be discharged.

I have never in any manner intermeddled with the said trust estate, nor received any of the rents and profits thereof; and I am very desirous

¹ In California a replication traversing new matter alleged in the answer is unnecessary. *Grangers' Business Ass'n v. Clark*, 84 Cal. 201.

to be discharged from the trusts in the bill mentioned, and I am ready and willing to convey and release the trust premises to such persons, or to do such other acts as this honorable Court shall direct, for that purpose, upon being indemnified in so doing, and having my costs and expenses.

39. Vexatious suit ; settled accounts ; claim of benefit of defence as if raised by plea or demurrer.

We submit to the judgment of this honorable Court, and humbly insist that this suit is altogether unnecessary and vexatious ; and that even if the plaintiff had been entitled to any such relief as is prayed by the said bill, the same might have been obtained by proceedings at Law ; but we say that a large sum of money has been for a long time, and

now is, justly due and owing to us from the plaintiff, and that

* 2122 * during the whole of the transactions in the said bill mentioned

we were in advance with creditors of the plaintiff ; and that the plaintiff has repeatedly, and partly in the letters hereinbefore set forth, acknowledged the accuracy of the accounts rendered by us to him ; and has treated the same as being, as in fact they were, settled accounts ; and we claim the same benefit from this our answer as if we had pleaded the several matters herein stated, or any of them, or as if we had demurred to the said bill.

40. Want of interest in plaintiff ; craving same benefit as if defence by demurrer.

I am advised, and humbly submit, that the plaintiff has not any interest in the estate of the said testator, or in the matters in question in this suit, nor any such estate or interest in the said testator's estate, or the matters aforesaid, as to entitle the plaintiff to sustain this suit ; and I crave the same benefit from this defence as if I had demurred to the said bill.

41. Claim of benefit of same defence to amended as to original will.

We submit that the plaintiff has not by his said amended bill entitled himself to any equitable relief as against us ; and we accordingly claim the benefit of the same objections to the said amended bill which are made by our said answer to the said original bill.

REPLICATION.¹

Form of General Replication.

The replication of A. B., plaintiff, to the answer of C. D., defendant.

THIS repliant, saving and reserving to himself all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that, any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this honorable Court shall direct; and humbly prays, as in and by his said bill he hath already prayed.

Recent English Form of Replication.

Between A. B. Plaintiff,
and

C. D., E. F., G. H., &c. . . Defendants.

The plaintiff in this cause hereby joins issue with the defendant C. D., and will hear the cause on bill and answer against the defendant E. F. [all the defendants against whom the cause is to be heard on bill and answer], or on the order to take the bill as confessed against the defendant G. H.

Form of Replication prescribed in Chancery Rules of New Hampshire.

In the Supreme Judicial Court.

H—, ss.

T. P. v. T. D. & another.

The said plaintiff says his bill is true, and the defendant's answer, as set forth, is not true, and this he is ready to prove.

T. P., by

A. S., his Solicitor.

¹ By the 18th Mass. Ch. rule, as a substitute for the general replication now in use, the plaintiff shall enter in the cause, "that he joins issue on the answer;" and by the same rule it is provided that no special replication to an answer shall be filed, but by leave of Court, or one of the justices thereof, for cause shown.

* CHAPTER XI.

EXCEPTIONS TO ANSWERS.

1. *For insufficiency. (English Form.)*

In Chancery.

Between E. D. Plaintiff,
and
J. P. Defendant.

Exceptions taken by the above-named plaintiff to the answer of the defendant [*or, if more than one defendant, of the defendant —*] for insufficiency.

First exception.] For that the said defendant has not in and by his said answer, according to the best of his knowledge, remembrance, information, and belief, answered and set forth whether, &c.

Second exception.] For that the defendant has not in and by his said answer in manner aforesaid answered and set forth whether, &c.

[*And so with respect to the other exceptions, using the words of the interrogatory not answered.¹*]

In all or some of which particulars the said plaintiff is advised that the said answer of the defendant is evasive and insufficient, and ought to be amended, and humbly prays the same may be amended accordingly.

[Counsel's name.]

2. *For scandal.*

In Chancery.

Between E. D. Plaintiff,
and
J. P. Defendant.

Exceptions for scandal taken by the above-named defendant A. B. [*or, plaintiff, &c.*] to the bill of complaint of the above-named plaintiff

¹ Each exception should be confined to a distinct question, although the interrogatory, as numbered, may contain several questions; at least it ought to be so confined, if there is any ground for the defendant to contend that he has answered a part of the interrogatory. *Higginson v. Blockley*, 1 Jur. N. S. 1104; 25 L. J. Ch. 74, V. C. K. The exception should adopt the language of the interrogatory. *Woodroffe v.*

Daniel, 10 Sim. 243; *Brown v. Keating*, 2 Beav. 581; *Esdale v. Molyneux*, 1 De G. & Sm. 218, 219.

Exceptions do not lie to an unsworn answer. *Goodwin v. Bishop*, 145 Ill. 421. Under the New Jersey statute, exceptions lie to such an answer if the plaintiff has waived the defendant's oath. *Ryan v. Anglesea R. Co. (N. J.)*, 12 Atl. Rep. 539.

[or, to the answer of the above-named defendant A. B. to the bill of complaint of the said plaintiff] filed in this cause on the — day of —.

Describe the particular passages alleged to be scandalous; as thus :

* [First exception.] For that the whole of the paragraph of * 2125 the said bill [or, answer] (*here introduce language to identify the paragraph referred to*) is scandalous.

[Second exception.] For that the passage commencing with the words : "The said person," in the — line, and ending with the words "which he knew," in the — line, of the paragraph of said bill [or, answer] (*identify the paragraph*), is scandalous.

In all which particulars this exceptant excepts to the said bill [or, answer] as scandalous; and humbly insists that the said scandalous matter ought to be expunged therefrom.

[Counsel's name.]

3. *Memorandum that scandal has been expunged.*

Scandal expunged, pursuant to order dated the — day of —.¹

¹ A memorandum in the above form is usually written opposite the expunged passages.

* CHAPTER XII.

NOTICE OF MOTIONS.

1. *For an injunction to stay proceedings at Law.*

In Chancery.

[*Title of Cause.*]

Take notice that this honorable Court will be moved, for and on behalf of the plaintiff, on the —— day of ——, instant [or, next], that the defendant ——, may be restrained from commencing or prosecuting any action or other proceedings at Law against the plaintiff, for the recovery of the sum of \$—— in the plaintiff's bill mentioned, or for ——, or in respect of the matters mentioned in the plaintiff's bill, or any of them, until the further order of this Court.¹ Dated this —— day of ——; 1857.

A. B.
Plaintiff's Solicitor.

To. Mr. —— and Mr. ——,
Solicitors for the defendants.

2. *For an injunction to stay an action brought against an executor after decree.*

[*Title, &c.*]

Take notice that this honorable Court will be moved, &c.

That ——, of ——, may be restrained from further proceeding in or prosecuting the action at Law commenced by him in —— Court of, &c., against the defendant —— as executor of ——, the testator in the pleadings of this cause named, for the recovery of a sum of money alleged to be due to him from the estate of the said testator, and from commencing or prosecuting any other action or actions at Law against the said defendant —— as an executor as aforesaid. Dated, &c.

¹ In order to obtain an injunction for stay of proceedings at Law, an application must be made to the Court upon affidavit, verifying the facts alleged in the bill, and if the defendant has appeared, upon notice; if not, the application may be made *ex parte*, or leave may be asked for the Court to give notice of motion for a certain day; and if necessary permission

should also be required to serve the notice and copy of the bill upon the attorney for the plaintiff at Law. Ferguson v. Beavan, 16 Jur. 1111. If the defendant has appeared, interrogatories for his examination should be filed, and a copy delivered to his solicitor. Lovell v. Galloway, 20 L. T. 231, M. R.; see Wightman v. Whielton, 5 W. R. 337, M. R.

- * 3. *For special injunction against commission of waste or other act complained of in bill.* * 2127

[Title, &c.]

Take notice, &c., &c., that the defendant¹ — and his agents² [workmen and servants] may be restrained from [here follows the prayer in the bill] until the hearing of this cause, or the further order of the Court. Dated, &c.

4. *For the appointment of a Receiver.*

[Title, &c.]

Take notice, &c., &c., that some proper person may be appointed a Receiver of the rents and profits of the estates in the pleadings in this cause mentioned, with the usual directions.³ Dated, &c.

5. *Notice to next of kin of application for a representative ad litem of a deceased person.*

Whiteaves v. Melville (V. C. W.).

SIR,

We beg to inform you that on — an application will be made in this cause to —, by —, to appoint some person to represent the estate of the late —, deceased; and that unless you, the father and sole next of kin of the deceased, shall then appear and consent to be appointed so to represent the estate of the said intestate, some other person will be appointed.⁴

We remain, &c.,

A. B.,
Solicitors for the plaintiff.

6. *By representatives of deceased defendant, to dismiss suit, unless revived against them.*

[Title, &c.]

Take notice, &c., &c., on behalf of A. B., of, &c., and C. D., of, &c., the legal personal representatives of the late defendant E. F., now deceased, that the plaintiff may be ordered, within one month, to obtain and serve on them an order to revive this suit; or, in default thereof, * that the plaintiff's bill may stand dismissed. *If there* * 2128 *are surviving defendants, add:* as against the said A. B. and C. D., for want of prosecution.

¹ *Anst.*, Vol. II. p. 1714.

² See *Lord Wellesley v. Earl of Mornington*, 11 Beav. 180, 181.

³ A Receiver will be appointed to collect personal estate in a foreign country, and to get in rents, and also to sell the real estates there, and receive the produce thereof when sold. *Hinton v. Galli*, 24 L. J. Ch. 121, M. R. As to appointing a Receiver of a foreign corpo-

ration in New York, see *Logan v. McCall Pub. Co.* 140 N. Y. 447. A Receiver may also be appointed after a decree for sale. *In re Bywater's Estate*, 1 Jur. N. S. 227, V. C. W. And after a decree confirming a sale. *Merrill v. Elam*, 2 Tenn. Ch. 513.

⁴ See *Tarrant v. Lloyd*, 2 Jur. N. S. 371; *Tripp's Forms*, 60.

7. *By defendant, to dismiss or stay suit, unless prosecuted by assignee of bankrupt, sole plaintiff.*

[*Title, &c.*]

Take notice, &c., &c., on behalf of the defendant, A. B., that C. D. and E. F., the assignees [*or, that C. D., the official assignee — or, creditors' assignee*] of the estate and effects of the above-named plaintiff, who has been adjudicated a bankrupt, may be ordered within (three weeks) to take proper supplemental proceedings in this suit, for the purpose of prosecuting the same against the said defendant; or in default thereof.

If before decree; that the plaintiff's bill may stand dismissed — if there are other defendants, add: as against the said defendant — without further order.

Or, if after decree; that all further proceedings in this suit — if there are other defendants, add: as against the said defendants — may be stayed.

8. *Of filing answer.*

[*Title of cause, &c.*]

Take notice that I have filed the answer of the defendant in this cause.¹ Dated, &c.

Yours, &c.,

A. B.,
Defendant's Solicitor.

9. *Of having filed exceptions.*

Take notice that I have this day filed exceptions for scandal to the plaintiff's bill [*or, to the answer of the defendant A. B.*], in this cause [*or, matter*].

10. *Of having set down exceptions.*

Take notice that I have this day set down for hearing, exceptions for scandal to the plaintiff's bill [*or, to the answer of the defendant A. B.*] in this cause [*or, matter*].

11. *To take evasive answer off the file.*

[*Title, &c.*]

Take notice, &c., &c., that a certain paper writing filed in this cause by the defendant A. B., on the —— of ——, 18—, and purporting * 2129 to be * his answer to the plaintiff's bill of complaint (*or as may be*), may be taken off the file of this Court (*state why*),² and that the said defendant may be ordered to pay to the plaintiff his costs occasioned by the said answer, and of this application.

¹ In England, notice must be given in like manner of the entering of any appearance or filing any plea, demurrer, or replication.

² See *Lynch v. Leesane*, 1 Hare, 631; *Brooks v. Purton*, 1 Y. & Coll. C. C. 278; *Reid v. Barton*, 3 Jur. N. S. 263, V. C. W.

12. To take affidavit off the file for scandal and impertinence.

Take notice, &c., &c., that the affidavit of (the defendant A. B.) filed on the — day of —, may be taken off the file of this Court, as being scandalous and impertinent; and that (the defendant A. B.), on whose part and behalf the said affidavit was filed, may be ordered to pay the costs of and occasioned by the said affidavit, and the costs of this application.

13. For leave to amend an answer.

Take notice, &c., &c., on behalf of the defendant A. B., that the answer filed by him on the — day of —, 18—, to the plaintiff's bill may be amended in the respects following, namely (*state the proposed amendments as thus*: by inserting the name of "John Jones" in the title of the said answer; by substituting the date "1863" for the date "1836" in the fourth paragraph thereof; and by adding thereto the name of —, Esquire, the counsel by whom the said answer was settled and signed).

14. To discharge an order for irregularity.

[*Title, &c.*]

Take notice, &c., &c., that the order made in this cause, bearing date, &c., whereby, &c., may be discharged for *irregularity*, with costs to be taxed by one of the taxing masters of this Court [*or, by the clerk, or, registrar*]. Dated, &c.

A. B.,
Defendant's solicitor.

15. For leave to examine witnesses *de bene esse*.

[*Title, &c.*]

That the plaintiff may be at liberty to examine — and — as witnesses for him in this cause *de bene esse*,¹ and that some proper person may be appointed as a special examiner for the purpose of taking such examination. Dated, &c.

***16. Of appointment before Examiner to take cross-examination * 2130
of deponents in affidavits.**

[*Title, &c.*]

That the Examiner, —, Esq., has appointed the — day of —, at the hour of — o'clock, at his office in —, on behalf of the plaintiff [*or, defendant*], as the case may be, to cross-examine — and —, being the deponents in certain affidavits filed on the part of the said — in this cause; and further take notice that you are required at the like time and place to produce before the Examiner certain letters, dated, &c., and all other letters and copies of letters, books, memoranda,

¹ *Ante*, Vol. I. p. 932; *M'Kenna v. Everitt*, 2 Beav. 189, 191; *Hope v. Hope*, 3 Beav. 317.

papers, and writings in your or either of your possession or power relating to [the special matter or question in dispute], and other the matters in question in this cause.¹ Dated, &c.

A. B.,
Plaintiff's Solicitor.

To, &c.

17. That plaintiff's bill may stand dismissed for want of prosecution.

[Title, &c.]

Take notice, &c., &c., that the bill filed in this cause may stand dismissed out of Court, with costs to be taxed, &c., for want of prosecution. Dated, &c.²

To Mr. &c.,
Plaintiff's Solicitor.

18. By sole plaintiff, to dismiss bill filed without his authority.

Take notice, &c., &c., on behalf of A. B., the plaintiff named in the bill filed in this cause on the —— of ——, 18—:

1. That the said bill may be taken off the file of this Court, or dismissed with costs, such bill having been filed without his authority.
2. That the defendants' costs of this suit may be taxed, and that Mr. C. D., the solicitor by whom the said bill was filed, may be ordered to pay such costs to the defendants.
3. That in case he shall neglect so to do, and the plaintiff shall pay such costs, or any part thereof, the said C. D. may be ordered to repay to the plaintiff what he shall so pay, together with such costs as he shall be put to by reason of such non-payment.
- * 2131 * 4. That the said C. D. may be ordered to pay to the plaintiff his costs of this suit, if any, and of this application; to be taxed as between solicitor and client.

19. By a co-plaintiff, to strike his name out of bill filed without his authority.

Take notice, &c., &c., on behalf of A. B., one of the plaintiffs named in the bill filed in this cause on the —— day of —— 18—, that his name may be struck out of the record of the said bill; such bill having been filed without his authority; and that Mr. C. D., the solicitor by whom the said bill was filed, may be ordered to pay to the said A. B. his costs, if any, of this suit, and his costs of this application; to be taxed as between solicitor and client.

¹ Tripp's Forms, 62. Under the new practice in England, the evidence of all the witnesses is common to all parties to the suit, therefore one defendant may cross-examine the

witnesses of another defendant. Lord v. Colvin, 3 Drew. 22; 1 Jur. N. S. 298.

² Ante, Vol. I. p. 801; Tripp's Forms, 62.

20. *Notice of motion for decree.*

[Title, &c.]

Take notice, that this Court will be moved before, &c., at the expiration of — after the date hereof, or as soon after as counsel can be heard by, &c., of counsel for the plaintiff, that a decree may be made in this cause in accordance with the prayer of the plaintiff's bill.¹
Dated, &c.

Yours, &c.,

A. B.,
Plaintiff's Solicitor.

To —, the *Solicitor for the above-named defendant.*

The following affidavits will be used in support of such motion:—

The affidavit of, &c.

The affidavit of, &c.

21. *To settle minutes of decree.*

[Title, &c.]

I shall attend at — o'clock in the — on —, the — instant, at the Registrar's [or, clerk's] office to settle the minutes of the decree [or, order] in this cause. Dated, &c.

Yours, &c.,

A. B.,
Plaintiff's Solicitor.

To Mr. —

*Defendant's Solicitor.** 22. *Notice to pass decree.*

* 2132

[Title, &c.]

I shall attend at — o'clock in the — on —, the —, instant, at the —'s office, to settle the minutes of [or, pass] the decree [or, order] in this cause. Dated, &c.

23. *To vacate enrolment of decree.*

[Title, &c.]

Take notice, &c., &c., that the enrolment of the decree [or, order] dated the — day of —, made by his honor, —, may be vacated.
Dated, &c.

24. *To suppress depositions.*

[Title, &c.]

Take notice, &c., &c., that the deposition of A. B., a witness, examined in this cause on the part of the defendant before — Examiner, on the — day of — last, be suppressed. Dated, &c.

¹ Tripp's Forms, 63.

25. *For an issue at Law.*

[Title, &c.]

Take notice, &c., &c., that issue at Law may be awarded in this cause for the trial, by jury, of the matters in controversy therein. Dated, &c.

26. *To dissolve injunction.*

[Title, &c.]

Take notice, &c., &c., that the injunction issued in this cause may be dissolved, with costs. Dated, &c.

27. *For order to stay proceedings in original suit.*

A. B.
v. } Original bill.

C. D.)

C. D.
v. } Cross-bill.

A. B.)

Take notice, &c., &c., that the proceedings in the original suit commenced by the above A. B. be stayed until the said A. B. shall have put in his answer to the cross-bill, filed against him by C. D. Dated, &c.

Yours, &c.

To, &c.

* 2133

* 28. *For an attachment for contempt.*

[Title, &c.]

Take notice, &c., &c., that an attachment as for a contempt be issued against the above defendant, for violating the injunction issued in this cause. Dated, &c.

29. *For hearing.*

[Title, &c.]

Take notice that this cause will be brought to a hearing on bill and answer [or, on pleadings and proofs; or, on the demurrer filed therein; or, on bill, answer, and replication] before —, on the — day of —, at — o'clock, or as soon after as counsel can be heard. Dated, &c.

30. *Notice of hearing on bill and answer.*

(New Hampshire.)

IN THE SUPREME JUDICIAL COURT.

H—, ss.

T. P. v. T. D. & another.

The defendants will take notice that the said cause will be heard on bill and answer at the next law term.

T. P., by

A. S., his Solicitor.

If the bill is set down by *defendant* for a hearing on bill and answer, the notice on his part should have, underwritten, an affidavit of defendant's solicitor, as follows:—

• IN THE SUPREME JUDICIAL COURT.

H—, ss.

T. P. v. T. D.

I, A. D., solicitor of said defendant, testify and say that the defendant's answer [plea or demurrer] was delivered to the plaintiff's solicitor on the — day of —, 18—, and that — has since elapsed, and no amendment, replication, or exceptions have been delivered to me, or left at my dwelling-house or place of business, by the said plaintiff or his solicitor, or have otherwise come to my hands or knowledge.

A. D.

H— ss. ; —, —, 18—. Personally appeared A. D., and made oath that the above affidavit by him subscribed, is true.

Before me,

A. B., *Justice of the Peace.*

PETITIONS AND MOTIONS.

1. *Petition to take the answer of a defendant without oath.*

[*English Forms.*]

In Chancery.

Between A. B. Plaintiff,
and
C. D. [and others] Defendants.

To the Right Honorable the Master of the Rolls.

The humble petition of the plaintiff —

Showeth,

That your petitioner having filed his bill in this Court against the above-named defendant and others, he is willing to take the answer of the defendant C. D. without oath.

Your petitioner therefore humbly prays, that the said defendant C. D. may be at liberty to put in his answer to your petitioner's said bill without oath [*or, signature*].

And your petitioner shall ever pray, &c.

2. *To amend bill.*

[*Title, &c.*]

Showeth,

That your petitioner having filed his bill in this honorable Court, the defendants have not appeared thereto [*or, have appeared thereto, and have not yet answered*]; and your petitioner is advised to amend his said bill.

Your petitioner therefore humbly prays, that he may be at liberty to amend his said bill, as he shall be advised, without costs, amending the defendants', &c., copies.

And, &c.

* Another form of petition for amendment of bill. * 2135
 (New Hampshire.)

IN THE SUPREME JUDICIAL COURT.

H—, ss.

T. P. v. T. D. & another.

Amendment of bill.

After the words "—," insert "—."
 To Mr. Justice B.
 T. P. prays that the foregoing amendment to his bill may be allowed.
 T. P.

To T. D., T. M. & T. A.

Take notice, that on the — day of — next, the above petition will be presented to Mr. Justice B., at his office in Concord, at eleven o'clock in the forenoon.

T. P., by
 A. S., his Solicitor.

—, —, 18—.

3. To amend bill after answer, but not requiring further answer.

[Title, &c.]

Showeth,

That your petitioner [or, petitioners] having exhibited his [or, their] bill in this honorable Court against the said defendant R. A. and others, who have all appeared thereto and put in their answers, and that your petitioner [or, petitioners] is [or, are] advised to amend his [or, their] said bill, but he [or, they] does [or, do] not require any further answer from the defendants.

Your petitioner [or, petitioners] therefore humbly prays [or, pray], that he [or, they] may be at liberty to amend his [or, their] said bill, as he [or, they] shall be advised, amending the defendants' copies, and requiring no further answer from the said defendants.

4. To amend bill after answer, requiring further answer.

[Title, &c.]

Showeth,

That your petitioners having exhibited their bill against the above-named defendant W. F. and others, the said defendant W. F. only hath appeared and put in his answer thereto (none of the other defendants having yet appeared to the said bill), since which your petitioners are advised to amend their said bill.

Your petitioners therefore humbly pray, that they may be at liberty * to amend their said bill, as they shall be advised, on * 2136 payment of \$— costs to the said defendant W. F. in respect thereof, and without costs as to the other defendants.

And, &c.

5. *To amend a bill by adding a defendant.*

[Title, &c.]

Showeth,

That your petitioner filed his bill in this honorable Court, against the defendant, on the — day of —, to which the defendant has appeared and put in his answer, upon which your petitioner is advised to make E. F. a party in this cause, and to bring him before the Court as a defendant to the suit.

Your petitioner therefore prays that he may have leave to amend his bill by adding the said E. F., a defendant thereto, with apt words to charge him.

And, &c.

6. *Petition of course for leave to amend an answer by consent.*

[Title, &c.]

The humble petition of the defendant A. B., showeth as follows:—

1. The plaintiff lately filed his bill in this cause, against your petitioner; who appeared thereto; and on the — of —, 18—, filed his answer to the said bill.

2. Your petitioner has since discovered the mistakes hereinafter mentioned in his said answer; and desires to correct the same.

Your petitioner therefore humbly prays, that by consent of the plaintiff, his said answer may be amended in the respects following; namely [state the proposed amendments].

And, &c.

7. *The like, for leave to file supplemental answer by consent.*

[Title, &c.]

Showeth, &c.

1. The plaintiff lately filed his bill in this cause, against your petitioner; who appeared thereto; and on the — day of —, 18—, filed his answer to the said bill.

2. Your petitioner has since discovered certain mistakes in his said answer; and desires to explain and correct the same by a supplemental answer.

Your petitioner therefore humbly prays that, by consent of the plaintiff, he may be at liberty on or before the — of —, 18—,

* 2137 to file * a supplemental answer to the plaintiff's bill, for the purpose of [state what; as thus; correcting statements inadvertently made in his answer filed on the — of —, 18—, that he had not sold an artificial exhaust elsewhere than at his mill at W.; and as to the number of millstones to which such machinery has been applied].

8. *Of plaintiff to be admitted to sue in forma pauperis.*

[Title, &c.]

Showeth,

That your petitioner having filed his bill in this honorable Court against the said defendant, thereby setting forth, that [here state concisely the purport of the bill].

That your petitioner is not worth £5 in all the world, his wearing apparel and the matters in question in this cause only excepted, and he is utterly unable to prosecute his said suit, unless he is admitted to do so *in forma pauperis*.

Your petitioner therefore humbly prays, that he may be admitted to prosecute his said suit *in forma pauperis*, and that Mr. —— may be assigned his counsel, and Mr. —— his solicitor.

And, &c.

[Counsel's certificate to be written at the foot of the petition.]

I humbly conceive that the plaintiff has just cause to be relieved touching the matters of this petition, and for which he has exhibited his bill.

[Date.]

[Counsel's name.]

9. *Of a defendant to be admitted to defend in forma pauperis.*

[Title, &c.]

Showeth,

That your petitioner has been served with a copy of the bill in this cause; that your petitioner is not worth £5 in all the world, his wearing apparel and the subject-matter of this suit only excepted, and by reason of his poverty is unable to make his defence thereto, if not permitted to defend *in forma pauperis*.

Your petitioner therefore humbly prays, that he may be permitted to defend this suit *in forma pauperis*, and that counsel and solicitor may be assigned to him for that purpose.

And, &c.

* 10. *To assign a guardian ad litem to an infant defendant.* * 2138

[Title, &c.]

Showeth,

That the plaintiff has filed his bill against your petitioner, who has appeared thereto [and is preparing to answer the same]; that your petitioner is an infant under the age of twenty-one years.

That your petitioner is advised that —— of ——, who is your petitioner's [state relationship], is a proper person to be appointed his guardian to defend this suit.

Your petitioner therefore humbly prays, that the said —— may be assigned his guardian, by whom he may [answer the plaintiff's bill and] defend this suit.

And, &c.

11. For the appointment of a guardian ad litem on petition of the plaintiff.

[*Title, &c.*]

Showeth,

That the bill in this suit was filed against the defendant to foreclose a mortgage executed by the father of said defendant, who is now deceased, in his lifetime, to your petitioner, and praying for a sale of the mortgaged premises; and that the said defendant claims an interest in the said premises as heir-at-law of her father; and the said defendant C. D. resides in the town of —, and is, as the petitioner is informed and believes, an infant under the age of twenty-one years; viz., of the age of fifteen years and upwards. And that on the — day of — process in this cause was duly served on the said C. D. requiring her to appear and answer the said bill, returnable on the — day of —. And your petitioner further shows, that, although more than — days have elapsed since the day of appearance named in said process, no guardian *ad litem* has as yet been appointed for such infant, or applied for by her or by any person on her behalf, to the knowledge or belief of your petitioner.

Your petitioner, therefore, prays that A. H., the clerk of this Court, may be appointed guardian *ad litem* of such infant defendant, to appear and defend this suit in her behalf.

And, &c.

* 2139 * 12. *To be admitted to prosecute (or defend), by an administrator.*

(New Hampshire.)

To the Supreme Judicial Court.

H—, ss.

T. P. v. T. D. & a.

J. H., of, &c., says that T. P., the said plaintiff, died intestate, on the — day of —, 1860, and the said J. H. was at a Court of Probate for said county, held at —, on the — day of —, 186—, duly appointed administrator of the estate of said deceased; wherefore he prays that he may be admitted to prosecute this bill.

J. H.

And thereupon it is ordered that the said J. H. be admitted to prosecute said bill.

N. B., Clerk.

13. *For notice to administrator to appear and defend.*

(New Hampshire.)

To the Supreme Judicial Court.

H—, ss.

T. P. v. T. D. & a.

T. P. says that T. D., one of the defendants in this cause, died on or about the — day of —, 186—, and one X. Y. had been since duly

appointed administrator of his estate; wherefore he prays that said X. Y. may be duly notified to appear and defend the said suit.

T. P., by

A. S., *his Solicitor.*

14. For leave to make new parties upon the decease of one of the original parties.

Supreme Judicial Court.

C. G. L. Executor v. I. T. & als.

The plaintiff suggests that Nathaniel I. Bowditch, trustee under the will of Andrew Thorndike, one of the defendants to this suit, has deceased, and that William I. Bowditch and John Goldsborough have been appointed trustees in his place; and therefore asks leave to amend his bill and make them parties.

F. C. L., *Solicitor.*

* 15. *By husband and wife.*

* 2140

(New Hampshire.)

[*Title, &c.*]

G. P., of, &c., and said T. P., say that on the — day of —, 186—, said T. P. was lawfully married to G. P.; wherefore the said G. P. and T. P. pray that they may be admitted jointly to prosecute said bill.

G. P.

T. P., by

A. S., *their Solicitor.*

16. Petition of course, by party late an infant, on coming of age, to dismiss bill with costs, before decree.

[*Title and address.*]

The humble petition of the plaintiff, late an infant, but now of full age.

Showeth as follows,

1. Your petitioner, when an infant, by C. D., his next friend, filed his bill in this cause against the defendants; to which they appeared; but no decree has yet been made therein.

2. Your petitioner has now attained his age of twenty-one years; and is not desirous to proceed any further in the said cause.

Your petitioner, therefore, humbly prays that his said bill may stand dismissed out of Court; with costs to be paid by him to the said C. D. and to the defendants.

And your petitioner, &c.

17. *For discharge of defendant out of custody of sheriff or messenger.*

(English.)

[Title, &c.]

Showeth,

That your petitioner has been taken into custody by the sheriff of — [or, the messenger attending this Court], for not putting in his answer to the plaintiff's bill.

That your petitioner has this day put in his answer to the plaintiff's bill, as by the Record and Writ Clerk's certificate hereunto annexed appears.

Your petitioner therefore humbly prays that he may be discharged from the custody of the said sheriff of — [or, from custody] as touching his said contempt, upon paying or tendering the costs thereof.

* 2141

* 18. *To withdraw a plea or demurrer.*

[Title, &c.]

Showeth,

That the plaintiff having exhibited his bill in this honorable Court against your petitioner, your petitioner put in his plea [or demurrer] thereto, since which your petitioner is advised to make other defence to the said bill.

Your petitioner therefore humbly prays, that he may be at liberty to withdraw his plea [or, demurrer] upon payment of costs.

And, &c.

19. *That a feme covert may answer separate from her husband.*

[Title, &c.]

The humble petition of —, wife of the defendant —.

Showeth,

That the plaintiff has exhibited his bill in this honorable Court against your petitioner and her said husband [and others], to which your petitioner has appeared.

That your petitioner's said husband is residing at —, out of the jurisdiction of this Court [or, that your petitioner and husband are living separate and apart from each other, or, that the said bill is filed in respect of your petitioner's separate estate and interest in the estates (or, funds) in question in this cause].

Your petitioner therefore humbly prays, that your petitioner may be at liberty to put in her answer to the plaintiff's said bill separate from her husband.

And, &c.

20. Of a plaintiff for a *habeas corpus* to bring defendant in custody of sheriff to bar of the Court to answer his contempt for not appearing to or answering plaintiff's bill.

[Title, &c.]

Showeth,

That the plaintiff filed his bill against the defendant —, to which he has not appeared or answered.

That an attachment has issued against him at the instance of your petitioner, upon which he has been arrested and now remains in the custody of the sheriff of — [charged with other detainees].

Your petitioner therefore humbly prays, that a writ of *habeas corpus cum causis* may issue out of this honorable Court, directed to the said sheriff of the county of —, thereby commanding him to bring the * body of the said — into this honorable Court, on, &c., in * 2142 order that the said — may answer his said contempt, and be otherwise dealt with, according to law.

And, &c.

21. To use in original and cross-suits evidence taken in either of them.

[Titles of the two suits and address.]

The humble petition of the plaintiff in the first-mentioned suit [or, as may be].

Showeth as follows :

These suits are original and cross-suits, and issue has been joined therein.

Your petitioner therefore humbly prays, that in each of these suits, the plaintiffs and defendants, respectively, may be at liberty to read, at the hearing thereof, the evidence taken in the other of these suits ; saving all just exceptions.

And your petitioner will ever pray, &c.

22. To enlarge time to answer in cross-suit, till after answer in original suit.

[Titles of the two suits and address.]

The humble petition of the plaintiff in the first-mentioned suit.

Showeth as follows :

1. These suits are in the nature of original and cross-suits.

2. The bill in the first-mentioned suit was filed by your petitioner on the — day of —, 187- [and on the — day of —, 187- (if the case be so), interrogatories were filed for the examination of the defendants in answer to the said bill]. No answer thereto has yet been filed [or, as may be].

3. The cross-bill in the second-mentioned suit was filed on the — day of —, 187-, against your petitioner. The plaintiffs therein are respectively defendants to the said bill of your petitioner.

Your petitioner therefore humbly prays, that he may have [state the number of days or weeks] time to plead, answer, or demur, not demurring alone, in the second-mentioned suit, after the plaintiffs in that suit shall have put in their answer to the bill in the first-mentioned suit.

And your petitioner will ever pray, &c.

23. To stay proceedings in original suit till after cross-bill is answered.

[Titles of the two suits and address.]

The humble petition of the plaintiff in the second-mentioned suit.

Showeth as follows :

* 2143 * 1. The plaintiffs in the first-mentioned suit, on the — day of —, 187—, filed their original bill against your petitioner; who appeared and put in his answer thereto.

2. Subsequently to the said answer being sufficient, namely, on the — day of —, 187—, your petitioner filed his cross-bill in the second-mentioned suit against the plaintiffs in the first-mentioned suit, who appeared thereto and on the — day of —, 187—, your petitioner filed interrogatories for their examination in answer to such bill; but no answer thereto has yet been filed.

Subsequently to the filing of such cross-bill and interrogatories, namely, on the — day of —, 187—, the plaintiffs in the first-mentioned suit obtained an order to amend their said original bill; and on the — day of —, 187—, they materially amended the same; and on the — day of —, 187—, they filed interrogatories for the examination of your petitioner in answer to the said amended bill.

Your petitioner therefore humbly prays, that all proceedings in the first-mentioned suit may be stayed until the plaintiffs therein shall have fully answered your petitioner's said cross-bill.

And your petitioner will ever pray, &c.

24. To change a Solicitor.

[Title, &c.]

Showeth,

That your petitioner employed — of —, as your petitioner's solicitor in this suit, and your petitioner is now desirous to appoint — of — as his solicitor.

Your petitioner therefore humbly prays, that he may be at liberty to change his solicitor accordingly.

25. To prove exhibits by affidavit at the hearing of a cause.

[Title, &c.]

Showeth,

That this cause being set down to be heard before —, your petitioner is advised that it will be necessary for him to prove, at the hearing thereof, certain letters written by the defendant to — of the following dates, &c., that is to say [state the dates].

Your petitioner therefore humbly prays, that he may be at liberty at the hearing of this cause to read an affidavit of, or examine one or more witness or witnesses, *viva voce*, to prove the said defendant's handwriting to the said letters.

* 26. *For a plaintiff to dismiss his bill with costs.* * 2144

[*Title, &c.*]

Showeth,

That your petitioner having exhibited his bill in this honorable Court against the above-named defendant, who has appeared [and put in his answer] thereto, your petitioner is now advised to dismiss his said bill.

Your petitioner therefore humbly prays, that the said bill may stand dismissed out of this Court, with costs to be taxed by the proper taxing-master [*or, by the clerk of this Court*].

27. *To enter a decree nunc pro tunc.*

[*Title, &c.*]

Showeth,

That the decree [*or, order*] made in this cause, bearing date, &c., has been drawn up and passed by the registrar, but the time for entering the same, according to the rules of this Court, being elapsed,

Your petitioner humbly prays, that the said decree [*or, order*] may be entered *nunc pro tunc*.

And, &c.

28. *Special petition to rectify a decree or order.*

[*Title and address, to, &c.*]

The humble petition of the plaintiff [*or, as may be*].

Showeth as follows:

1. By the decree [*or, by an order*] made in this cause by [*as the case may be*], dated the —— day of ——, 18—, it was decreed [&c. *Set out so much of the decree or order as is material to the subject-matter of the petition*].

2. The said decree [*or, order*] has been duly entered in, &c.

3. Since such entry was made, your petitioner has discovered that the said decree [*or, order*] omits to [*state omission required to be rectified*].

Your petitioner therefore humbly prays, that the said decree [*or, order*] may be rectified or corrected by [*state in what respect*] : or that the Court [*or, as may be*] will please to make such other order in the premises as to the Court [*or, as may be*] shall seem meet.

And your petitioner, &c.

* 2145 * 29. *To discharge distringas on stock.*

A. B. Plaintiff,
and
The Governor and Company of the Bank
of England Defendants.
To, &c.

The humble petition of, &c.

Showeth,

That on, &c., a writ of *distringas* was issued at the instance of your petitioner against the defendants to prevent the sale or transfer of £— [describe the stock], standing in the books of the above-named defendants in the name of —, &c.

That the purpose for which said writ of *distringas* was issued having been satisfied, your petitioner is desirous of having the same discharged.

Your petitioner therefore humbly prays, that the said writ of *distringas* may be discharged accordingly.

30. *For a solicitor to deliver his bill of costs, and that it may be taxed.*

[Title of cause if there has been any suit, if not, the title should be.]

"In the matter of —, one of the solicitors of this Court."

Showeth,

That your petitioner employed —, one of the solicitors of this Court, to prosecute this suit [and divers suits at Law], and in other matters, as your petitioner's solicitor and attorney [or, if no suit, say, in various matters of business for him] between the month of —, 186—, and the month of —, 186—.

That your petitioner is desirous of obtaining the papers of the said — belonging to your petitioner, but the said — refuses to deliver up the same until his bill of costs is paid.

That the said —, although applied to for that purpose, has not delivered his bill of costs against your petitioner.

Your petitioner therefore humbly prays, that upon your petitioner submitting to pay the said — what shall appear to be due to him upon taxation of the said bill, that the said — may be ordered, within — after notice hereof, to deliver to your petitioner his bill of all such fees and disbursements as he claims to be due to him from your petitioner; and that it may be referred to the taxing-master [or, clerk] of this Court, to tax and settle such bill; and that your petitioner and the said — may produce before the said Master, upon oath, as the said Master shall

direct, all books, papers, and writings in their custody or power * 2146 respectively relating to such bill, or any of the * items or charges

therein; and that your petitioner and the said — may be examined upon interrogatories or otherwise touching the same or any of them, as the said Master shall direct; and that all other proper and usual directions may be given. And, &c.

31. *For leave to withdraw replication and amend bill.*

[Title, &c.]

Showeth,

That the defendant in this cause has appeared and put in his answer to the bill; and that your petitioner has filed a replication [*or, taken issue on the answer*], but no witnesses have been examined by either party. That since the filing of the replication, your petitioner has been advised, and believes that it is essential to his rights in this cause that his bill should be amended, by adding thereto [*or, inserting therein*] the following statements [*insert new matter proposed*].

And your petitioner further shows, that he had no knowledge of the facts above set forth, nor was he aware of the necessity of introducing them into his bill, until after the said replication was filed [*or, issue was taken on the answer*].

Your petitioner therefore prays that he may be at liberty to withdraw his said replication, and amend his bill as proposed above, or otherwise, as he shall be advised, on payment of costs. And, &c.

32. *Petition to a Justice for a temporary injunction.*

(New Hampshire.)

(To be written on the original bill or a copy.)

In the Supreme Judicial Court.

H—, ss.

T. P. v. T. D. & a.

To Mr. Justice S.

T. P. prays that the injunction sought in the annexed bill may be granted by said justice, the said bill having been duly filed, and the said Court not being in session.

T. P. by

A. S. his solicitor.

33. *Petition for an injunction.*

(New Hampshire.)

M—, ss. To the Hon. A. F., one of the Justices of the Supreme Judicial Court.

N. E. C., of, &c., complains against G. C., of, &c., and says she has caused to be filed in the office of the clerk of said Court for said county, * her libel for divorce against the said G. C., in * 2147 which she alleges, among other things, that she was married to said G. C. on, &c., at, &c.; that she has resided, and had her home at, &c. [*stating the substance of the charges in the libel*]; that she has had by said G. C. two children, now living, to wit, G. C., aged — years, and L. C., aged — years; that in said libel the petitioner prays

for a divorce and the custody of said children, and for a suitable allowance out of the estate of said G. C. for her support and maintenance and for the support and maintenance of her said children; that the said G. C. is the owner of a house and — acres of land in —, &c., in which house he now resides, of the value of —, &c., and of personal estate, in, &c., of the value of, &c., and he has threatened that if the petitioner should attempt to obtain a divorce from him he would spend all his property, so that she would get none of it for herself or her children; and she believes that, unless he is in some way restrained, he will dispose of all his property, so that, in case an allowance should be made to her, she would be unable to collect it from him.

Wherefore she prays for a writ of injunction, to restrain said G. C. from disposing of, or in any way incumbering, any of his estate, real or personal, until the end of the next law term of said Supreme Judicial Court.¹

(Signed)

N. E. C.

34. Petition for an injunction and Receiver, — pending question of Insolvency.

(Massachusetts.)

G. T. L. et alii, Petr's, v. G. F. C. et al.

And now the petitioners in the above-entitled cause come and move this honorable Court that an injunction be issued by the Court restraining and enjoining B. P. W. and W. R. W., and each of them and their and each of their servants, agents, and attorneys, from making any sale, transfer, conveyance, incumbrance, or disposition of any of the estate, choses in action, property, or effects, real or personal, of the firm of W. & L., or of any of the separate estate of either said B. P. W. or W. R. W., whether consisting of real estate or choses in action, or of any other personal property, and from making any disposal of any of the books of account, papers, documents, vouchers, or evidences of title of either said firm or of said B. P. W. or of said W. R. W.

* 2148 * And your petitioners also move this honorable Court to appoint in this cause some suitable and proper person as Receiver of the estates, choses in action, property, and effects, real and personal, of said firm, and as Receiver of the separate estates, real and personal, of said B. P. W. and W. R. W. and G. T. L., respectively, and of all the books of account, papers, vouchers, and evidences of title of said firm, and of said B. P. W. and of said W. R. W. and of said G. T. L., and to decree and order that all said estates, choses in action, property, and effects, real and personal, and said books of account, papers,

¹ Provision is made by statute in Massachusetts for an attachment of the husband's property in certain cases of libel for divorce by the wife, in order to secure a suitable support and maintenance for her and the children committed to her. Pub. Stats. c. 146, §§ 11, 12, 13.

vouchers, and evidences of title, shall be delivered up into the control and hands of said Receiver.

B. & B.,

Atty's and Sol'rs for the Petitioners.

35. Motion by defendant for allowance out of property in hands of Receiver.

SUFFOLK, ss. } SUPREME JUDICIAL COURT, April, 18—.
In Equity. }

Between E. S. Plaintiff,
and

E. A. Defendant.

And now before answer the defendant E. A. comes and says that he has delivered to J. K., who has been appointed Receiver in this cause without notice to the defendant, all the cash, books, papers, vouchers, and property in his hands and possession belonging or in any way pertaining to the said partnership business and assets, and amongst other things, cash to the amount of —, and certain promissory notes and due-bills amounting to about the sum of —. And that by reason of the same the defendant is left without means of support, or of employing counsel in this cause; wherefore he prays the Court here, that the said Receiver may be ordered to restore and pay over to the defendant the above sum of money, and the notes and due-bills above mentioned, the same and the proceeds thereof to be accounted for by the defendant, on a final settlement of said partnership.

By M. & C., his Attorneys.

Defendant's motion for allowance, April 14, 1866, after hearing the same is granted.

R. A. C., J. S. J. C.¹

* 36. Motion to modify an injunction with the qualified allowance * 2149 of the Court thereon.

Commonwealth of Massachusetts.

S—, ss.

Supreme Judicial Court.

At the Rules.

In Equity.

D. S. v. H. E. et al.

And now the said H. E., one of the defendants in said suit, comes, and before answer to said bill of complaint, and waiving no rights in said suit, moves the Court that the injunction, which has heretofore issued against him in this suit without notice, be so far modified as to allow him, the said H. E., to collect, settle, or adjust the notes or obligations in his hands, as agent of the said Columbia Insurance Company,

¹ Ebeneezer Secomb v. Edwin Allyn, Suffolk Co., Mass., Ap. T. S. J. C. 1866.

with the parties liable thereon, and give up the same when so settled or adjusted to such parties liable thereon, and in general that the same may be so modified as to allow him, said H. E., to settle, collect, and reduce to money in such manner as he shall deem proper the notes, obligations, and evidences of debt in his said possession, the proceeds thereof to remain in his hands until further order of this Court, or some justice thereof.

By his Solicitors,
C. T. & T. H. R.

This motion is so far allowed, that the defendant H. E. is allowed to collect and receive the amount due on notes in his hands and to hold the proceeds under the injunction; but it is disallowed so far as it moves for liberty to compound and compromise said notes.

G. T. B., J.S.J.C.

37. Petition for an attachment for disobeying an injunction.

(New Hampshire.)

M——, ss.

To the Honorable A. F., one of the Justices of the Supreme Judicial Court.

A. B., of, &c., complains against C. B., of, &c., and says that she is the wife of said C. B., and on the — day of —, 186—, she caused to be filed, in the office of the clerk of said Court for said county, her libel, praying for a divorce from said C. B., and for other relief for the causes therein set forth; and upon her petition a writ of injunction was duly issued by said justice, on the — day of —, enjoining and prohibiting said C. B. from imposing any restraint upon her personal liberty during the pendency of said libel; which was duly served upon said C. B. on the — day of —.

* 2150 * Yet the said C. B., well knowing the premises, but wholly regardless of the said injunction, on, &c., at, &c., with force and arms made an assault upon the said A. B., and beat and bruised her, and imprisoned and deprived her of her personal liberty for the space of — days, from said, &c., to &c., in contempt of said injunction and against the peace and dignity of the State.

Wherefore she prays that the said C. B. may be held to answer for said contempt, and that justice may be done in the premises.

(Signed) A. B.

M——, ss., —, 186—. A. B. personally appeared and made oath that the above complaint, by her subscribed, is in her belief true.

Before me,

N. B., *Justice of the Peace.*

38. Another form of prayer in a petition for an attachment for breach of an injunction.

Wherefore the plaintiffs pray that your honor will, in consideration of the breach of said injunction, issue a writ of attachment against said

defendant, and order that the said defendant stand committed to the common jail at — in and for said county of — until he pay to the plaintiffs the amount of damages they have sustained in consequence of the taking down of said lime-kiln and machinery, and the removing of the same, together with all the costs and expenses of the plaintiffs in procuring said application and writ of attachment, together with such fine as to your honor shall seem meet.¹

39. Writ of attachment for contempt.²

[Seal.]

(State of Maine.³)

To the sheriffs of our counties and their deputies

We command you to attach the body of A. B., of —, in our county of —, so that you have him before our Supreme Judicial Court, next to be holden at —, within and for our county of —, on the — Tuesday of — next, to answer for an alleged contempt in not [here * assert the cause], and you may take a bond with sufficient * 2151 sureties, to C. D., the party injured, in the sum of —, conditioned, that he then and there appear and abide the order of the Court. Hereof fail not and make due return thereof and of your proceedings, at the time and place aforesaid. Witness E. S., Justice of our said Court, the — day of —, in the year of our Lord, 18—.

— — —, Clerk.

When the party is not bailable, that part of the writ is to be omitted.

40. Order for an attachment, &c., for breach of an injunction.

(Vermont.)

G. H. }
 v. } In Chancery — W— Co.
 H. W. }

Upon the petition of said H., filed in said Court on the — day of —, A. D. 18—, praying that C. B. E. and W. T., both of R., in said county, might be made to appear before the Chancellor to show cause, if any they had, why they should not be dealt with for contempt in violating the injunction named in said petition; and an order having been made in the premises and duly served; and said E. and T. having ap-

¹ Stimpson v. Putnam, 41 Vt. 240.

² For another form of warrant for the arrest of a party for contempt by breach of an injunction: for form of order in reference to a hearing, taking of testimony, &c., thereupon: form of order for commitment with proviso for bond: form of final decree for damages, costs, and fine; and form of warrant for commitment to enforce the payment of said damages, costs and fine, — see Stimpson v. Putnam, 41 Vt. 238, 241-244.

³ Where a bill in Equity is pending in one county, in Maine, and an injunction is applied

for by the plaintiff to a judge or Court in another county, the writ of injunction is properly made returnable to the county where the bill is pending; and a judge or Court in another county has no jurisdiction of an alleged contempt by disregarding or refusing to obey the injunction. Androscoggin & Kennebec R. R. Co. v. Androscoggin R. R. Co., 49 Maine, 392. In matters of contempt, exceptions may be taken on the question of jurisdiction, where it is distinctly raised and adjudicated upon as matter of Law. 49 Maine, 392.

peared in compliance therewith, by themselves and their solicitor, and the matter of said petition having been fully heard and considered,— It is adjudged that said E. and T. are guilty of contempt of said Court, by taking and removing said library from the office and possession of said H., contrary to the order and injunction of said Court; and that such misconduct was calculated to, and did, impair and prejudice the rights of said H., as set forth in said petition. Wherefore, it is adjudged and ordered that the said E. and T., and each of them, be attached of their body, and they, and each of them, be thereupon committed to the county jail, in the town of Newfane, in said county of W., and be therein confined and imprisoned till discharged by the order of the Court, and pay the costs of this petition and the proceedings thereupon; and that process to that end be duly issued by the clerk of said Court, unless the said E. and T. shall forthwith and within — days from and after the day on which notice of this order shall be served on them, return and restore said library to the possession of said H., in the place and condition from which it was taken by them as aforesaid; and that this order be filed in the cause by said clerk, and notice of the same be given to the said E. and T. by delivering to each a true copy hereof, certified by said clerk to be a true copy, under the seal of said Court, the giving of said notice to be certified upon this order by the oath of the person by whom said copies shall be delivered as aforesaid.

Dated this — day of — A. D. 18—.

J. B., *Chancellor.*

* 2152

** 41. For leave to file a bill of review on the ground of the discovery of new facts.*

[Title, &c.]

Showeth,

That your petitioner has exhibited his bill in this honorable Court against X. Y., for the purpose of [state general object of original bill], and praying [state the prayer].

That the said X. Y., being duly served with process, appeared to the said bill and put in his answer. And the said cause being at issue, was brought to a hearing before —, on, &c., whereupon a decree was made in effect as follows: [set forth the substance of the decree.]

That said decree has since been duly enrolled [or, entered of record and judgment thereon rendered]. And your petitioner further showeth, that since the time of making and entering said decree, your petitioner has discovered new matters important and material in the said cause; particularly [here set forth the new matters], which new matters your petitioner did not know, and could not, by reasonable diligence, have known, so as to make use thereof in the said cause, before and at the time of making and entering the said decree.

Your petitioner, therefore, humbly prays, that he may have leave to file a bill of review against the said C. D. for the purpose of obtaining a review and reversal of the said decree; and that all further proceedings under the same may be stayed. And, &c.

42. Petition for leave to file an information in the nature of a quo warranto, and for an injunction forbidding the exercise of the right, &c., of certain offices.¹

To the Honorable, &c.

Humbly show your petitioners, the President, Directors, and Co., of the L. Bank, that by an act of the legislature of the Commonwealth of M., approved on the — day of —, A. H., E. B., F. K., and their associates and successors, were incorporated by the name of the President, Directors, and Company of the L. Bank, to be located in E. C., in the County of M., being a part of the city of C.; that afterwards at a meeting of the petitioners for said act, called and notified in the manner provided by law, and held on the — day of —, current, the corporation created by said act was legally organized, and A. H., L. H., &c., &c., were duly chosen directors thereof. And thereafterwards, on the — day of —, the said board of directors elected L. H. president of said bank.

* And so your petitioners aver, that they are a corporation *2153 legally established and organized, and have a right to hold and exercise and enjoy the franchise, powers, and privileges granted by said act of incorporation, undisturbed, and without molestation, interference, or intrusion, and no persons other than the above-named A. H., L. H., &c., &c., have any right in law to hold or exercise the office of directors of said corporation. And no person other than the said L. H. has any right in law to hold or exercise the office of president of said corporation.

And your petitioners further represent, that E. B. and J. M. D., &c., &c., have illegally and against the right of the petitioners, intruded themselves into the office of directors of said L. Bank, and have assumed to hold and exercise, and still do hold and exercise, the rights, powers, and duties of directors of said bank, claiming the right to do so under the act of incorporation aforesaid.

And the said E. B. has intruded himself into the office of president of said bank, and has assumed to hold and exercise, and still does hold and exercise, the rights, powers, and duties of president of said bank. And the said E. B., as president, and the said J. M. D., &c., &c., as directors, have, and still do, without right, exercise and enjoy the franchise granted by said act of incorporation. Whereby the private right and interest of your petitioners and of the directors and members of said incorporation are injured and put in hazard.

Wherefore your petitioners pray for leave to file an information in the nature of a quo warranto, in which the above-named E. B., J. M. D., &c., &c., may be called upon to show by what right they have intruded themselves into the office of directors of said L. Bank, and exercise and claim to exercise the rights, powers, and duties of that office, and the said E. B. may be called upon to show by what right he has intruded himself into the office of president of said bank, and claims to exercise

¹ Lechmere Bank v. Boynton, 11 Cush. 369.

the rights, powers, and duties of the said office, and that the said E. B., as president, and the said J. M. D., &c., &c., as directors, may be called upon to show by what right they exercise and enjoy the franchise granted by said act of incorporation before mentioned.

And your petitioners further ask, that, until a hearing and final decision on said information shall be had, an injunction may issue against the said E. B., forbidding him from exercising the rights, powers, and duties of president of said bank, and against the said E. B., J. M. D., &c., &c., forbidding them from exercising the rights, powers, and duties of directors of said bank, and from enjoying the franchise granted by the act of incorporation before mentioned and for general relief.

* 2154 * 43. *Petition for transfer of a fund to a person becoming entitled on the death of the tenant for life. (English Form.)*

In Chancery.

Lord Chancellor.

Vice Chancellor

[or, the Master of the Rolls.]

Between A. B. Plaintiff,
and

C. D., E. F., &c. Defendants.

To the Right Honorable the Lord High Chancellor of Great Britain
[or, To the Right Honorable the Master of the Rolls].

The humble petition of the above-named plaintiff [or, of the defendant
—, or, of A. B., of, &c.].

[Introductory statements showing the title of the petitioner.]

That — Bank £3 per cent annuities and £— reduced annuities are respectively standing in the name of the Accountant-General of this Court on the credit of this cause [to an account entitled “—”], and there is the sum of £— cash in the bank on the like credit [and to the like account], which sum of cash has accrued in respect of the last [July] dividends on the said bank annuities.

That your petitioner attained his age of twenty-one years on the — day of —, he having been born on the — day of — [as appears by the Chief Clerk's certificate on this cause, dated, &c.], and he thereupon became absolutely entitled to the said funds [or, that the said (the tenant for life) died on the — day of —, whereupon your petitioner became absolutely entitled to the said funds].

That £— is the apportioned sum or amount in respect of the dividend on the said bank annuities for the current half-year expiring on —, which sum is payable to the legal personal representative of the said [tenant for life].

Your petitioner therefore humbly prays, that the costs of your peti-

tioner, as between solicitor and client, and the costs of all other proper parties of this application and consequent thereon, may be taxed by the proper taxing master; and that so much of the said £—— Bank £3 per cent annuities, standing in the name of the Accountant-General on the credit of this cause, as with the said £—— cash in the bank on the like credit will raise the said costs when taxed [and the duty payable on the funds in Court], (the amount thereof to be verified by affidavit), [and also the said sum of £——], may be sold.

That the residue of the said bank annuities, and any interest to accrue due on the said annuities previously to the transfer thereof, and *also the — reduced annuities standing in the name of * 2155 the said Accountant-General on the credit of this cause, may be respectively transferred and paid to your petitioner, or that your Lordship [or, Honor] will make such further and other order in the premises as the circumstances of the case may require.

44. Petition of rehearing and appeal. (English Form.)

[Title of causes.]

To the Right Honorable the Lord High Chancellor of Great Britain.

The humble petition of the above-named plaintiff B. E., of, &c.
Showeth,

1. That by the decree dated, &c., made by his Honor Vice-Chancellor Kindersley in the first-mentioned cause, it was ordered that, &c.
2. That after the said first-mentioned cause had been set down for hearing, but before the same came on to be heard, the said defendants, the executors and devisees in trust of the will of the said testatrix, and the said S. E. and also J. S., filed a special case in this Court, in which they prayed the opinion of the Court whether the appointment made by the said testatrix A. E., by her said will, &c., was or was not a good and valid disposition in fee-simple of the estate called, &c.
3. That the said special case came on to be heard before his Honor Vice-Chancellor Kindersley, on, &c., and his honor, by a decree or order dated, &c., declared that the appointment purporting to be made by the said testatrix A. E., by her said will, &c., was not a good or valid disposition of the said estate, &c.
4. That the said first-mentioned cause came on for a hearing before his Honor Vice-Chancellor Kindersley, for further directions, together with a petition which had been presented therein to your Lordship by the said J. S., and with the special case.
5. That an order was made by Vice-Chancellor Kindersley, on, &c., whereby it was declared that the testatrix A. E. had not, at the date of her will, any power to appoint by will the estate called, &c.
6. That the said order of his Honor V. C. K., dated, &c., is, as your petitioner is advised and humbly submits, erroneous, and the same ought to be reversed, and the said order of the — day of —, so far as it declares that the said testatrix had not, at the date of her will, any power to appoint by will the estate called, &c., and so far

as any other of the directions contained in the said order are or may be inconsistent with the declaration which your petitioner submits ought to have been made with respect to the validity of the said will of the said testatrix A. E. is erroneous, and ought to be reversed.

* 2156 * Your petitioner, therefore, humbly prays your Lordship, that the said first-mentioned cause may be reheard before your Lordship for further directions on the Master's general report, and that the said special case in the said second-mentioned cause, and the said petition of the said J. S. may be respectively reheard before your Lordship; and that the said order of the —— day of —— made by his Honor Vice-Chancellor Kindersley [on hearing the said special case may be reversed, and that the said order of the said Vice-Chancellor, dated, &c., made on the rehearing the said special case and hearing the said first-mentioned cause for further directions on the Master's report, and the said petition of the said J. S.], may be reversed or varied, and that it may be declared that the said will of the said testatrix A. E., dated, &c., was a due exercise of the power of appointment reserved to the said testatrix in respect of the said estate, &c., and that such directions in the said order of, &c., as are inconsistent with these declarations, may be reversed or varied so as to give effect to such declarations respectively [and that the said petition of the said J. S. may be dismissed], or that the said order may be altered or varied in such manner, or that such other order may be made as to your Lordship may seem meet, and the circumstances of the case may require. And, &c.

We humbly conceive that the special case and petition in the above petition mentioned and referred to, and the first-mentioned cause touching the matters in this petition mentioned, are respectively proper to be reheard before your Lordship, if your Lordship shall think fit.¹

[Names of Counsel.]

A. B.

C. D.

¹ Tripp's Forms, 82, 83, and notes. By Chancery Rule 110 in New Jersey, every petition for a rehearing shall set out concisely the special matter or cause on which such re-

bearing is applied for, and shall be signed by two counsel, except in cases submitted without argument, when it shall be sufficient if signed by one counsel. 15 N. J. Eq. 535.

*CHAPTER XIV.

* 2157

AFFIDAVITS.

1. General form.

(English.)

In Chancery.

Between A. B. Plaintiff,
and

C. D., and E. F. Defendants.

I, G. H., of, &c. [*place of residence, and description or addition, or* I, A. B., the above-named plaintiff], make oath and say as follows [*or, if more than one deponent, we, G. H., of, &c., and I. J., of, &c., severally make oath and say as follows*]:

1. I, the deponent, G. H., say, &c.
 2. I, the deponent, I. J., say, &c.

The facts and circumstances deposed to by me in the —— paragraphs of this affidavit are true and within my own personal knowledge.

The facts and circumstances deposed to by me in the — paragraphs of this affidavit are believed by me to be true, from information which I have received from —.

Sworn, &c.

[See forms of jurats.]

Another general form.

In Chancery [or Equity].

Before the —.

A. B. { State [*or, Commonwealth*] of —, } ss.: I, X. Y., of —,
v. { — County: }
C. D.

in said county, merchant, being duly sworn, depose and say, that at, &c.
And further this deponent saith not.

X. Y.

Sworn to [or, affirmed] before me this
— day of —, 1865.

L. M., Justice of the peace.

2. Affirmation by a Quaker or Moravian.

I, A. B., of, &c., being one of the people called Quakers, make solemn affirmation and say as follows:—

I, this affirmand, &c.

* 2158

** 3. Affirmation by other persons.*

I, A. B., of, &c., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful [*or, in Massachusetts*, that I have conscientious scruples against taking any oath]; and I do also solemnly, sincerely, and truly affirm and declare, &c.

Joint affidavit and affirmation.

In Chancery.

[*Title of cause or matter.*]

I, A. B., of, &c., make oath and say, and I, C. D., of, &c., being one of the people called Quakers [*or, having conscientious scruples against taking any oath, or, as the case may be*], do solemnly, sincerely, and truly affirm and declare [*or as may be*] as follows:—

And first, I, the said A. B., for myself, say,—

1.

2.

And I, the said C. D., for myself, say,—

3.

4.

A. B. } Sworn by the said A. B., and affirmed by the said C. D.,
C. D. } &c., at —— [*state where and when*], before me, &c.

4. Common affidavit to be annexed to a bill in interpleader suit.[*Title, &c.*]

I, ——, the above-named plaintiff, make oath and say, that the bill in this suit [*or, the bill hereunto annexed*] is not filed by me in collusion with *any* or either of the defendants in the said bill named, but such bill is filed by me of my own accord for relief in this honorable Court.

5. Affidavit of secretary to public company to be annexed to bill in interpleader suit.[*Title, &c.*]

I, H. D., of, &c., make oath and say, that I am the secretary of the —— Company, and that I do not, and to the best of my knowledge and belief the said —— Company does not, nor do or does any members or member thereof, collude with either of the defendants named in the bill hereunto annexed, but such bill is filed by me, on behalf of the said company, of my own accord, for relief in this honorable Court.¹

¹ See *Bignold v. Audland*, 11 Sim. 23. If the filed by the said company of its own accord, company is plaintiff, say, "but such bill is for relief," &c.

* 6. *Affidavit of the plaintiff that he has not the deeds in his possession, to annex to a bill before it is filed.* * 2159

[*Title, &c.*]

I, T. P., the plaintiff in this cause, make oath and say, that I have not, nor to the best of my knowledge, remembrance, or belief ever had, all or any of the deeds, documents, and writings relating to the estate in question in this cause, and mentioned in my bill, exhibited in this honorable Court against the said defendant, nor do I know where the said deeds, documents, and writings, or any of them, now are, unless they are in the custody or power of the above-named defendant.

7. *Affidavit by plaintiff to accompany bill to obtain the benefit of a lost instrument.*

[*Title, &c.*]

I. A. B., of, &c., the above-named plaintiff, make oath and say, as follows:—

1. *State loss of the instrument, as thus:* Some time since, to wit, on or about the — day of —, the [describe the instrument, as: promissory note, dated the — day of —] mentioned in the — paragraph of the bill in this cause hereunto annexed [or, now produced and shown to me, and marked A], was in my custody or possession; but I have since accidentally lost the same; and I do not know where the said promissory note [or, as may be] now is, unless it is in the custody or possession of the above-named defendants, or some or one of them.

8. *Affidavit to obtain order to be admitted to sue or defend a suit, in forma pauperis.*

[*Title, &c.*]

I, A. B., of, &c., the above-named plaintiff [or the above-named defendant], make oath and say, that I am not worth the sum of five pounds in all the world, my just debts being first paid, and my wearing apparel and the matter in question in this cause only excepted.

9. *Affidavit of the service of a notice of motion.*

[*Title, &c.*]

I, Henry Walker, of —, clerk to —, solicitors for the above-named plaintiff, make oath and say, that I did on the — day of —, instant, serve Mr. —, who is solicitor of the above-named defendants [or, Mr. — and Mr. —, who are solicitors respectively for the above-named defendants, — and —], with a notice in writing, purporting *that this honorable Court would be moved before his * 2160

Honor —, on the — day of —, then next, or so soon after as counsel could be heard, that, &c. [*here set forth the notice*], by delivering to and leaving with a clerk of the said Mr. —, at his office in —, a true copy of such notice [*or in case there should be more than one solicitor, then add*, and also by delivering and leaving with a clerk of the said Mr. —, at his office in —, a true copy of such notice].

10. *Affidavit of personal service of a bill.*

[*Title, &c.*]

On, &c., I personally served the above-named defendant, —, with a printed bill of complaint, filed in the above cause, at the — office, on, &c., having an indorsement thereon in the form prescribed by —, by delivering to and leaving with the said defendant, —, at —, in the county of —, a printed copy of such bill with such indorsement thereon as aforesaid, which said printed copy was stamped with the proper stamp of — office, indicating the filing of such bill and the date of the filing thereof.

11. *Affidavit of service of an amended bill on the solicitor of the defendant.*

[*Title, &c.*]

On the — day of —, I served Mr. —, the solicitor of the above-named defendant, —, with a printed bill of complaint filed in the above cause in the — office, on the — day of —, as amended on the — day of —, pursuant to an order dated the — day of —, having an indorsement thereon in the form prescribed by —, by delivering to and leaving with the said Mr. — [*or, with a clerk of the said Mr. —*], at his office situate at —, a printed copy of such amended bill, with such indorsement, &c. [*as in last form, and introducing the word "amended"*].

12. *Affidavit of delivery of interrogatories.*

[*Title, &c.*]

On the — day of — I delivered to the above-named defendant, —, a copy of certain interrogatories for the examination of the said defendant, —, by leaving such copy with the said defendant, —, personally [*or, with the wife or servant of the said —, at his dwelling-house*], at —, in the county of —, which said copy of interrogatories was duly stamped and marked as an office copy at the — office, and purported to be a copy of [*or, such of*] the interrogatories filed in this cause on the — day of —, for the examination of the said defendant — [*as the said defendant was required to answer.*]

* 13. *Affidavit to obtain order assigning guardian ad litem to an infant defendant.* * 2161

[Title, &c.]

I, —, of —, solicitor for the above-named [infant] defendant, —, make oath and say, that the said — is an infant under the age of twenty-one years, and A. B., of —, is the [state relationship] of the said infant, and has no interest in the matters in question in this cause adverse to the said —; and the said A. B. is a proper person to be appointed a guardian of the said —, by whom to defend this suit.

14. *Affidavit of tender of costs where defendant taken under attachment or by messenger.*

Affidavit by solicitor or defendant or his clerk.

[Title, &c.]

1. That by an order made in this cause, bearing date the — day of —, it was ordered that the said defendant T. M., upon his paying or tendering the costs of his contempt in, &c., be discharged out of the custody of the sheriff of — [or, the messenger], as to his said contempt.

2. I did, on the — day of —, instant, pursuant to such order, tender to Mr. —, who is plaintiff's solicitor in this cause, the sum of \$ —, for the costs of such contempt, but the said Mr. — refused to accept the same or any other sum of money for such costs as aforesaid.

3. I did, on the — day of —, serve the said Mr. — with the said order by delivering to or leaving with his clerk, at the office of the said —, situate at —, a true copy of such order duly passed and entered.

15. *Affidavit as to the correctness of the translation into English of a document in a foreign language.*

[Title, &c.]

1. I am well acquainted with and in the constant practice of translating the Italian language.

2. The paper writing marked with the letter —, produced and shown to me, this deponent, at the time of swearing this my affidavit, contains a correct and faithful translation into the English language of such parts or pages of the original document in the Italian language as are marked respectively with the letters — and —, also produced and shown to me, this deponent, at the time of swearing this affidavit.

* 2162 * 16. *Affidavit as to production of documents pursuant to a decree or order.*

[Title, &c.]

I, C. D., the defendant above named, make oath and say, that neither I, this deponent, nor any person or persons, for my use, to my knowledge or belief, or with my privity or consent, have or has, or ever had, in my, his, or their custody or power, any deeds, papers, or writings, or books of account relative to the matters in question in this cause, save and except the several deeds, books of account, papers, and writings mentioned and contained in the schedule hereunto annexed.

Another form on a different state of facts.

In Chancery.

[Title, &c.]

I, ——, of ——, make oath and say as follows: —

1. I say I have in my possession or power the documents relating to the matters in question in this suit set forth in [the first or second parts of the] first schedule hereto annexed.

2. I further say, that I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. I further say —— [*state upon what grounds the objection is made, and verify the facts so far as may be*].

4. I further say, that I have had, but have not now, in my possession or power, the documents relating to the matters in question in this suit set forth in the second schedule hereto annexed.

5. I further say, that the last-mentioned documents were last in my possession or power on [*state when*].

6. I further say, —— [*state what has become of the last-mentioned documents, and in whose possession they now are*].

7. I further say, &c. [*proceed as in next preceding form*].

NOTE. *If the party denies having any, he is to make an affidavit as in the next preceding form, omitting the exception.*

17. *Affidavits of mortgagee, or his attorney, having attended to receive mortgage money certified to be due.*

[Title, &c.]

1. I did [under and by virtue of a power of attorney dated, &c., and executed by the said plaintiff, ——, and], in pursuance of the Chief Clerk's certificate, bearing date the —— day of ——, made in this cause on the —— day of ——, personally attend and wait at the —— from before the hour of —— of the clock in the forenoon of the said

* 2163 —— * day of ——, until after the hour of twelve at noon, being the time and place mentioned in the said Chief Clerk's certificate, in order to receive from the above-named defendant A. B. the sum of

\$— by the said certificate reported due and directed to be paid to me [or, to the said plaintiff] for principal, interest, *and costs*, in respect of my [or, his] mortgage security in question in this cause, at which time the said defendant A. B. did not, nor did any person or persons on his account or behalf attend or pay to me the said sum of \$—, or any part thereof, nor has he since paid or tendered the same to me [or, as I have been informed by the said plaintiff, and verily believe, to the said plaintiff], but the same sum of \$— still remains due and unsatisfied.

18. *Affidavit to obtain a Ne Exeat.*

In Chancery [or, Equity].

Between W. B. R. and others Plaintiffs,

and

H. W. H. Defendant.

Commonwealth of Massachusetts, } ss.: I, W. B. R., one of above-
County of Suffolk, } named plaintiffs, being duly sworn, depose and say that the above defendant is actually and justly indebted to the said plaintiffs in the sum of \$3000,¹ for [*here state the ground and circumstances of indebtedment*]; for the recovery of which the said plaintiffs did, on the — day of —, file their bill of complaint in the office of — for said county of Suffolk, against the said defendant; to which said bill the said defendant has not yet answered; and, being so indebted, the said defendant has lately declared in the presence of each of the plaintiffs, and informed them and this deponent verily believes, that he will without delay leave this Commonwealth and go to live and reside in parts beyond the seas [or, in California or Texas], out of the jurisdiction of this Court. And this deponent has no doubt, but verily believes, that if the said defendant should be allowed to depart out of this Commonwealth, the plaintiffs' debt will be either entirely lost to them, or the recovery thereof greatly endangered.

Sworn, &c.

W. B. R.

[*Certificate of allowance.*]

* 19. *Another form of affidavit to obtain a Ne Exeat.*

In Chancery [or, Equity].

[*Title, &c.*]

I, A. B., of (*residence*), the above-named plaintiff, make oath and say, as follows:—

¹ The plaintiff to the writ must either be able to swear positively that so much is actually due, or in some other manner to point out to the Court the sum to be marked on the writ. The only exception is in the case of a suit for an account, in which it will be sufficient, if the plaintiff can swear, that according to the best of his belief, any particular sum at the least would be found justly due to him upon a balance, if the account were taken. *Anst.*, Vol. II. pp. 1702, 1703; *Rice v. Hale*, 5 *Cush.* 238.

1. *State concisely the institution and object of the suit, as thus:* The bill in this cause was filed by me on the — day of —, 187-, against the above-named defendant, C. D., to obtain an account of all moneys received by the said defendant for or on my account, or for my use, as my agent in the management of my estate called E., in the county of —, as in the said bill mentioned, and of the application of such moneys; and for payment by the said defendant to me of what, on taking such account, should be found due from him to me.

2. *State the existence of a debt due from the defendant as thus:* The two accounts now produced and shown to me, and marked respectively F. and G., have been rendered to me by the said defendant, and purport to be his accounts as such agent as aforesaid. It appears by the said accounts that the said defendant is indebted to me in the sum of —, on balance thereof. I have investigated the said accounts, and I positively say that [or, to the best of my belief] the said defendant C. D. is now justly and truly indebted to me in the sum of —, and upwards, on the balance of said accounts [or as may be].

3. *Show defendant's intention to go abroad, and deponent's means of knowledge.*

4. From the facts aforesaid, and for the reasons hereinbefore stated, I verily believe that the said defendant C. D., unless he be forthwith apprehended, will depart out of the jurisdiction of this honorable Court; and that the debt due to me as aforesaid from the said defendant will be in danger of being lost to me by the said defendant quitting the said jurisdiction.

Sworn, &c.

20. *Affidavit to obtain writ of distresses on stock.*

[Title, &c.]

A. B. [the name or names of the party or parties on whose behalf the writ is sued out] v. The President, Directors, and Company of the Bank of —.

I, A. B., of —, do solemnly swear, that according to the best of my knowledge, information, and belief, I am [or if the affidavit is made by a solicitor, C. D., of —, is] beneficially interested in the stock herein-after particularly described, that is to say [here specify the * 2165 * amount of the stock to be affected by the writ, and the name or names of the person or persons, or body politic or corporate, in whose name or names the same shall be standing].

21. *Affidavit of waste being committed, to ground an injunction to stay waste.*

[Title, &c.]

I, A. B., the above-named plaintiff, make oath and say, that the defendant C. D., in the month of —, 186-, did pull down and destroy part of the dwelling-house and out-buildings at —, of which this depo-

ment is seised in fee-simple, as this deponent is advised and believes, and for the recovery whereof this deponent is proceeding in the Court of _____. And this deponent further says, that the said C. D. has felled and cut down several timber and timber-like trees and saplings, not proper to be felled, growing in and upon the lands and grounds belonging to the said mansion-house, and the grounds and premises at, &c., aforesaid, and has carried away such trees, and sold the same to J. H., a ship-builder, at, &c.. And this deponent further says, that the said C. D. is now cutting down and felling the trees and thriving timber standing for ornament, shade and shelter, in and about the mansion-house and buildings aforesaid, and in the avenues, walks, &c., belonging thereto; and this deponent further says, that the said C. D. threatens that he will cut down, carry away, and sell all the timber and timber-like trees, ornamental and thriving timber and saplings, standing and growing in and about the said estate, at, &c., aforesaid; and this deponent verily believes that the said C. D. will carry his threats into execution, unless restrained by this honorable Court, to the great loss and damage of this deponent.

A. B.

Sworn, &c.

22. Affidavit identifying a person named in a certificate of his death or burial.

[Title, &c.]

1. I was well acquainted with A. B., named in the paper writing or certificate marked with the letter D, produced and shown to me at the time of swearing this affidavit.

2. The said A. B. is the same person as A. B., of, &c., named in the certificate of the Chief Clerk of his Honor Vice-Chancellor —, dated,¹ &c.

**23. Affidavit verifying the parish register as to the burial of a party in a cause and his identity. * 2166.*

[Extract from book.]

1. That the above [extract] is a true copy of an entry made in the books kept by the vicar of the parish of, &c., for registering burials in the said parish, so far as the same relates to the burial of the said A. B.

2. I, this deponent, carefully examined and compared the same with the said book.

3. The said A. B. is the same person as A. B. mentioned in, &c., as I know, having been acquainted with the said A. B. in his lifetime.

¹ See Tripp's Forms, 106, note.

24. *Affidavit of the execution of a deed by attesting witness.*

[Title, &c.]

I was present on the — day of —, and saw — sign, seal, and deliver the parchment writing or deed dated, &c., marked with the letter —, produced and shown to me at the time of swearing this my affidavit.

2. The name or signature “—” thereto set and subscribed, as the party executing the said deed, is the proper handwriting of the said —, and the name — set and subscribed as the person witnessing the execution thereof by the said —, is of the proper handwriting of me, this deponent.

25. *Affidavit of execution of deed by a person not a witness to the execution.*

[Title, &c.]

1. I am well acquainted with the handwriting of the defendant F. G. H. [having often seen him write].

2. The indenture dated, &c., and purporting to be made between the said defendant F. G. H., &c., produced to me at the time of making this affidavit, marked with the letter —, was, as I believe, duly executed by the said defendant F. G. H., and the name “F. G. H.” set and subscribed at the foot of said indenture is of the proper handwriting of the defendant F. G. H.

3. I am also well acquainted with the handwriting of J. E. B., of, &c., and I say that the name of “J. E. B.” set and subscribed to the said indenture, as the attesting witness to the execution thereof by the said F. G. H., is the proper handwriting of the said J. E. B.

* 2167 * 26. *Affidavit of a witness being of the age of seventy years to obtain order to examine him de bene esse.*

[Title, &c.]

I, A. B., &c., solicitor for the above-named plaintiff in this cause, make oath and say,—

1. That C. D., of, &c., is a very material witness for the said plaintiff in this cause, and that he cannot without the evidence of the said C. D., as I am advised and verily believe, safely proceed to a hearing of this cause.

2. The said C. D. is now of the age of seventy years, as I have been informed by him and verily believe [and he appears to this deponent to be very weak and infirm, and in a declining state of health; on which account, and from his advanced years, he is, in all probability, not likely to live long].¹

¹ See Tripp's Forms, 61, 108, and notes; M'Kenna v. Everitt, 2 Beav. 189, 191.
2150

27. Affidavit by plaintiff or defendant to obtain an order for a commission or for an Examiner to examine witnesses abroad.

[*Title, &c.*]

1. This cause is now at issue, and I, this deponent, am desirous of proceeding therein.

2. I have several witnesses to examine in support of the case made by my bill [*or, answer*], who now live and reside at — and — [and particularly A. B., C.D., and E. F.], who can, as I believe, prove the truth of the allegations made in the — paragraphs of my bill [*or, answer*].

3. The several witnesses above named are, as I believe and am advised, material and necessary witnesses for me in this cause, and without their testimony I cannot safely proceed to a hearing; but that with the testimony of those witnesses, I am advised and believe, I shall be able to make a good defence in this cause [*or, can establish my right to relief in this cause*].

28. Affidavit in support of application to amend bill.

*Where application is before * filing replication.*

1. That the draft of the prepared amendments to the plaintiff's bill has been settled and approved, and signed by counsel.

* 2. That such amendment is not intended for the purpose of * 2168 delay or vexation, but because the same is considered to be material for the case of the plaintiff.

If after ¹ replication filed or after the expiration of four weeks from the time when the answer, or the last answer, is deemed sufficient, add, —

3. That the matter of the proposed amendments is material, and could not, with reasonable diligence, have been sooner introduced into such bill. [*Show also the materiality of the amendments, and state such facts as will enable the Court to judge whether reasonable diligence has been used.*]

29. Affidavit in support of application for leave to file voluntary answer; after the expiration of the time limited.

I, A. B., of, &c., the solicitor [*or, managing clerk to Mr. C. D., of, &c., the solicitor*] for the above-named defendant E. F. in this suit, make oath and say as follows:—

1. That the printed bill of complaint [*or, the subpoena*] in this suit was served on the said defendant E. F. on the — day of —, 186—, as I have been informed by the said defendant and verily believe.

2. That I am advised by counsel and believe, that it is material and

² *Ante*, Vol. I. p. 415; Tripp's Forms, 183.

¹ *Ante*, Vol. I. p. 415; *Stuart v. Lloyd, 3 M'N & G. 181.*

necessary for the defence of the said defendant E. F. in this suit, that he should put in [a plea, or] an answer to the said bill.

3. That instructions to settle such [plea, or] answer were laid before counsel on the — day of —.

4. That it is not desired to put in such [plea, or] answer for the purpose of delay, and that further time, until the — day of — next will, in my judgment, be necessary to put in such [plea, or] answer.

30. Affidavit that no answer has been delivered, so that a decree may be entered on the bill as confessed.

(New Hampshire.)

In the Supreme Judicial Court.

H —, ss.

T. P. v. T. D. & another.

I, A. S., solicitor of said plaintiff, testify and say that no plea, answer, or demurrer to the bill of complaint of T. P. v. T. D., T. M., and T. A. has been delivered to me by either of said defendants, or left at my dwelling-house or place of business, or has otherwise come to my hands or knowledge.

A. S.

*2169 * H —, ss. —, —. Personally appeared A. S., and made oath that the above affidavit, by him subscribed, is true.

Before me,

N. B., Clerk.

31. Affidavit of having discovered new matter for a bill of review.¹

[Title, &c.]

I, J. C. P., the defendant, make oath and say, that since the time of pronouncing the decree in this cause, I, the deponent, have discovered new matter of consequence in the said cause, particularly that the plaintiff on, &c., did, &c. [state the substance of the newly discovered matter], which I, this deponent, could not possibly know, so as to make use thereof, in my defence, at the time of pronouncing the said decree.

32. Affidavit by an executor, to obtain order to restrain action after decree.

[Title, &c.]

1. I have, in the first schedule hereunder written, set forth a true, full, and particular account of all and singular the sum and sums of money received by or come to the hands of me, this deponent, as the executor of T. T., the testator in the pleadings of the cause named, or to the hands of any other person or persons by my order, or for my use.

¹ See affidavit in Baker v. Whiting, 1 Story, 218, 220.

2. I have really and *bona fide* paid, as executor of the said testator, the several sums of money mentioned and set forth in the second schedule hereunder written, in discharge or part discharge of the debts of the said testator, and for his funeral expenses.

3. I have *not* any sum or balance whatever on account of the personal estate of the said testator in my possession or power [*or*, I have the balance or sum of \$—— and no more, on account of the personal estate of said testator, in my hands].

4. The outstanding personal estate and effects of the said testator consist of the several debts and other particulars, so far as I am enabled to set forth the same, specified in the third schedule hereunder written.

The first schedule referred to by the foregoing affidavit.

The second schedule referred to by the foregoing affidavit.

The third schedule referred to by the foregoing affidavit.

* 33. *Affidavit verifying Receiver's account.*

* 2170

In Chancery.

[*Title, &c.*]

I, ——, of ——, the Receiver appointed in this cause, make oath and say as follows:—

1. I say that the account contained, from page —— to page ——, both inclusive, in each of the two several books marked with the several letters A and B, produced and shown to me at the time of swearing this my affidavit, and purporting to be my account of *the rents and profits of the real estate and of the outstanding personal estate of ——, the testator [or, intestate], in this cause*, from the —— day of ——, 186—, to the —— day of ——, 186—, both inclusive, doth contain a true account of all and every sum and sums of money received by me, or by any other person or persons by my order, or to my knowledge or belief, for my use, on account or in respect of the *said rents and profits accrued due on or before the said —— day of ——*,¹ *or on account or in respect of the said personal estate other than and except what is included as received in my former account [or, accounts] sworn to by me.*

2. And I further say, that the several sums of money mentioned in the said account hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. And I further say, that the said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

¹ The day to which the account is made up.

OATHS AND JURATS.¹1. *To bill or answer or affidavit.**Common Form.]*

Commonwealth of Massachusetts, } ss.: On this — day of —,
Essex County.

before me personally appeared A. B., and made oath that he has read the above bill [*or, answer or affidavit*], subscribed by him [*or, has heard it read*], and knows the contents thereof, and that the same is true, of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

J. C. P., *Master in Chancery*
[*or, Justice of the Peace*].

2. *To the answer of a foreigner.*

On this — day of —, 1865, before me personally appeared A. B., who is a foreigner and unacquainted with the English language, and made oath to the above answer before me by the interpretation of A. H. P. (who was previously appointed and sworn by me to make true interpretation of the same), and thereupon the said A. B. did on his oath aforesaid declare that the matters contained in his said answer are true, &c., &c.

E. L., *Master, &c.*
[*or, Justice of the Peace*].

3. *The affidavit of the interpreter to be annexed to the answer. The following is the form in 1 Fowler Exch. Pr. 429.*

Between A. B., Plaintiff, }
and
C. D., Defendant. }

E. F., of —, in the county of —, gentleman, maketh oath and saith, that he is well acquainted with the French and English

¹ Another form of oath and jurat to an answer by one defendant [English]: —

To the defendant: Is that your name and handwriting?

You do swear that so much of this your answer as concerns your own acts and deeds is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named you believe to be true. So help you God.

A. B. { Sworn [if another defendant joins in the answer, add: by the defendant A. B., at (state where and when)] before me, &c.

When all the defendants joining in the same answer are not sworn at the same time, a separate jurat must be written for each occasion on which the oath is administered. Braithwaite's Oaths in Ch. 52, n. (a).

languages, and * that he hath truly and correctly read over and * 2172 translated to the defendant the bill filed by the plaintiff in this cause; and this deponent further saith, that he hath read over to the defendant the translation in the French language of the English answer of the said defendant hereunto annexed; and this deponent further saith, that the same is a just and true translation of the English into the French language, which said answer is also hereunto annexed.

Sworn, &c., &c. Before me,

E. F.

M. H., *Master in Chancery.*

4. *To the answer of a corporation.*

The answer of the defendants, the President, Directors, and Company of the Bank of America, was taken this — day of —, in the year —, before me, under the common seal of the said corporation, as by their said seal affixed appears. 2 Fowler, 416, 422.

M. H., *Master in Chancery.*

ENGLISH FORMS OF JURATS.

5. *Where answer or affidavit sworn at Record and Writ Clerk's Office.*

Sworn [by the defendant A. B., or, by the defendants, or, deponents A. and B.] at the Record and Writ Clerk's Office, Chancery Lane, in the county of Middlesex, this — day of —, 187-, before me, —.

6. *If before a London Commissioner.*

Sworn, &c., at my house [or, Chambers], No. —, Field Court, Gray's Inn, in the County of Middlesex, this — day of —, 187-, before me,

A. B.,

A London commissioner to administer oaths in Chancery.

7. *Or if in the country.*

Sworn, &c., before me,

C. D.,

A commissioner to administer oaths in Chancery in England.

8. *Ordinary form of oath and jurat; one defendant or deponent.*

To the defendant or deponent: Is that your name and handwriting?

You do swear that the contents of this your answer [or, affidavit] are true. So help you God.

Sworn, &c. [as above].

* 2173 * 9. *The like: two or more defendants or deponents sworn together.¹*

To each defendant or deponent: Is this your name and handwriting?

To both or all: You do severally swear that the contents of this your answer [or, affidavit] are true. So help you God.

Sworn, &c.

10. *Where the guardian of an infant swears to the answer.*

Sworn, &c., by A. B., the guardian of the infant defendant — —, assigned pursuant to an order dated the — day of —.

11. *Where the defendant or deponent cannot write, but makes his mark.*

Sworn, &c., at, &c., on &c., this answer [or, affidavit] having been first read over to the said defendant [or, deponent], who appeared perfectly to understand the same, and made his [or, her] mark thereto in my presence before me, —.

12. *Oaths and jurat, where a witness reads the answer or affidavit to a marksman.*

To the witness: Is that your name and handwriting?

You do swear that you have truly, distinctly, and audibly read over the contents of this answer [or, affidavit] to the defendant [or, deponent] A. B. [If any exhibits are referred to in the answer or affidavit, add: and explained to him the nature and effect of the exhibits therein referred to]; and that he appeared to understand the same, and made his mark to this answer [or, affidavit] in your presence. So help you God.

To the marksman: Is that your mark?

You do swear that the contents of this your answer [or, affidavit] are true. So help you God.

Sworn by the defendant [or, deponent] A. B. at [state where and when]; C. D., the witness to the mark of the said A. B., having been first sworn that he had truly, distinctly, and audibly read over the contents of this answer [or, affidavit] to the defendant [or, deponent] A. B. [If any exhibits are referred to in the answer or affidavit add: and explained to him the nature and effect of the exhibits therein referred to]; and * 2174 the defendant [or, deponent] A. B. appeared to understand * the same, and made his mark to this answer [or, affidavit] in the presence of the deponent C. D.; before me, &c.

13. *Oath of a blind defendant or deponent, and jurat, where the officer reads to him the answer or affidavit.*

To the defendant or deponent: You do swear that the contents of this your answer [or, affidavit] are true. So help you God.

¹ Where all the defendants or deponents are not sworn at the same time, a separate jurat must be written for each occasion on which the oath is administered.

Sworn by the defendant [or, deponent] A. B. at [state where and when] before me; I having first truly, distinctly, and audibly read over to him the contents of this answer [or, affidavit] [*If any exhibits are referred to in the answer or affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to], he being blind; and he appeared to understand the same.

[Signature and style of office.]

14. Oaths and jurat, where a witness reads the answer, or affidavit, to a blind defendant or deponent.

To the witness: Is that your name and handwriting?

You do swear that you have truly, distinctly, and audibly read over the contents of this answer [or, affidavit] to the defendant [or, deponent] A. B. [*If any exhibits are referred to in the answer or affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to]; and that he appeared to understand the same and signed his name [or, made his mark] to this answer [or, affidavit] in your presence. So help you God.

To the blind man: You do swear that the contents of this your answer [or, affidavit] are true. So help you God.

Sworn by the defendant [or, deponent] A. B. at [state where and when]; C. D., the witness to the signature [or, mark] of the defendant [or, deponent] A. B. having been first sworn that he had truly, distinctly, and audibly read over the contents of this answer [or, affidavit] to the defendant [or, deponent] A. B. [*If any exhibits are referred to in the answer or affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to], he being blind, and the defendant [or, deponent] A. B. appeared to understand the same, and signed his name [or, made his mark] to this answer [or affidavit] in the presence of the deponent C. D., before me, &c.

Witness to the signature [or, mark] of the defendant [or, deponent] A. B.:
C. D.,
of [residence].

*** 15. Ordinary form of oath by a deaf and dumb defendant, or deponent, and jurat.** * 2175

To the defendant or deponent: Is that your name and handwriting?

You do swear that the contents of this your answer [or, affidavit] are true. So help you God.

16. Where a married woman answers separately from her husband.

Sworn, &c., by, &c., pursuant to an order dated, &c., whereby the said —— is at liberty to answer separate from her husband, before me, ——.

17. Oaths and jurat where a foreigner answers or deposes in English, through an interpreter.

*To the interpreter:*¹ Is that your name and handwriting?²

You do swear that you well understand the French language [or, other language of the foreigner], and that you have truly, distinctly, and audibly interpreted the contents of this answer [or, affidavit] to the defendant [or, deponent] A. B.; and that you will truly and faithfully interpret to him the oath about to be administered to him. So help you God.

To the foreigner, through the interpreter: Is that your name and handwriting?

You do swear that the contents of this your answer [or, affidavit] are true. So help you God.

Sworn at —— this —— day of, &c., by the defendant [or, deponent] A. B., through the interpretation of C. D.; the said C. D. having been first sworn that he had truly, distinctly, and audibly interpreted the contents of this answer [or, affidavit] to the defendant [or, deponent] of [residence].³ A. B., and that he would truly and faithfully interpret to the said A. B. the oath about to be administered to him; before me, &c.

18. Oaths and jurat where the answer or affidavit is in a foreign language; the oath being interpreted to the defendant or deponent.

To the interpreter: Is that your name and handwriting?

You do swear that you well understand the French language [or, other language of the foreigner], and that you will truly and faithfully interpret to the defendant [or, deponent] A. B. the oath about to be administered to him. So help you God..

To the foreigner through the interpreter: Is this your name and handwriting?

You do swear that the contents of this your answer [or, affidavit] are true. So help you God.

Sworn at —— this —— day of, &c., by the defendant [or, deponent] A. B., through the interpretation of C. D.; the said C. D. having been first sworn that he would truly and faithfully interpret to the said A. B. the oath about to be administered to him; before me, &c.

¹ The interpreter is usually a notary public; but it is not essential that he should be so. See Braithwaite's Oaths in Chan. 58, n. (h).

² It seems desirable, but is not, in practice, considered essential, that the interpreter should sign the answer or affidavit. Braithwaite's Pr. 381, n. (a); Braithwaite's Oaths in Ch. 35, n. (k).

³ If the interpreter does not sign the jurat, his place of residence and addition must be stated in the jurat, immediately after the first occurrence of his name.

19. Verification of a translation of the answer or affidavit into English, in like case.¹

To the translator: Is that your name and handwriting?

You do swear that you well understand the French language [or, other language in which the affidavit is written], and that the above written is a true translation into the English language of the answer [or, affidavit] of A. B. in the French [or as may be] language thereunto annexed. So help you God.

C. D. of [residence, &c. ; as, Cornhill, in the City of London, notary public], was sworn at — this — day of, &c., that the above written is a true translation into the English C. D. language of the answer [or, affidavit] of A. B., in the French [or as may be] language thereunto annexed; and affixed together at the top thereof under the [notarial] seal of the said C. D., with his name thereto subscribed; before me, &c.

20. Jurat to answer or affidavit of a Hindoo, interpreted to him in English.

Subscribed with a seal, and sworn to by the above-named A. B., at [state when and where], through the interpretation of C. D.; the said C. D. having been previously sworn that he had first translated and explained to the said A. B., in the Hindostanee language, the contents of this answer [or, affidavit]; that the said A. B. perfectly understood the contents of this answer [or, affidavit]; that he the said C. D. would truly interpret the oath about to be administered to the said A. B.; and that the seal used by the said A. B. was his own signet, wherewith he always signed documents, according to the custom of his own country; before me, &c.

¹ Where an affidavit is written in a foreign original. See Braithwaite's Oaths in Ch. 35 language, a translation into English, verified n. (4). by a competent person, must be filed with the

* CHAPTER XVI.

SUMMONSES.

1. *Summons for leave to amend bill.*

IN Chancery [or, Equity].

Between A. Plaintiff,
and

B. Defendant.

Let all parties concerned attend at, &c., on, &c., at —— of the clock, &c., on the hearing of an application on the part of the above-named plaintiff, that he may be at liberty to amend his bill as he shall be advised on or before the —— day of —— next.

Dated, &c.

[*Name of Judge.*]

This summons was taken out by, &c., of, &c., solicitors for the said plaintiff.

To the above-named defendant ——.

2. *Summons for further time to answer.*

Commencement as in preceding.] An application on the part of the defendant ——, that [he] may have one calendar month's [or, —— week's] further time to plead, answer, or demur, not demurring alone to the plaintiff's bill; and that the costs of this application may be costs in the cause.

[*Conclusion as in preceding.*]

3. *Summons for leave to put in a voluntary answer.*

Commencement as before in No. 1.] An application on the part of the defendant ——, that [he] may have leave to put in a plea or answer to the plaintiff's bill on or before the —— day of —— next; and that the costs of this application may be costs in the cause.

[*Conclusion as before.*]

4. *Summons by plaintiff for further time to answer interrogatories filed by the defendant.*

Commencement as before in No. 1.] An application on the part of the plaintiff for one calendar month's [or, —— week's] further time

to answer the interrogatories filed in this cause by the said defendant * — for the examination of the said plaintiff; and * 2178 that the costs of this application be costs in the cause.

[Conclusion as before.]

5. Summons for leave to file exceptions to answer.

Commencement as before in No. 1.] An application on the part of the above-named plaintiff that he may have leave to file exceptions for insufficiency to the answers of the defendants A. B. and C. D. on or before the expiration of — weeks, from the time when the answer of the defendant E. F. to the plaintiff's amended bill shall have been filed.

[Conclusion as before.]

6. Summons to attend a hearing on reference to a Master.

In Chancery [or, Equity].

Between A. B. Plaintiff,

and

C. D. Defendant.

In pursuance of the authority and directions contained in an order of reference, made in the above cause, by [state the Judge or Court], I, G. F. C., one of the Masters in Chancery for the [state the jurisdiction] [or, appointed Master for this case], do hereby summon you, C. D., defendant in the above cause, to appear before me, the said G. F. C., Master as aforesaid, at [state the place] on the — day of —, to attend a hearing of the matters in reference before me in said cause, to be had by virtue of the said order, and hereof you are not to fail at your peril.

Dated the — day of —, in the year of our Lord one thousand eight hundred and —.

G. F. C., Master, &c.

7. Summons for affidavit and production of documents.¹

Commencement as before in No. 1.] An application on the part of the above-named — for an order that the above-named — do within — days after the service of the order to be made upon this application, make a full and sufficient affidavit, stating whether he has or has had in his possession or power, any, and if any, what documents relating to the matters in question in this suit, and accounting for the same; and that the said — do within — days afterwards produce and leave with the —, such of the said documents as by such affidavit shall appear to be in his possession or power, except such of the same (if any) as he may by his said affidavit object to produce, with the usual directions.

[Conclusion as before.]

¹ See In re Brown, 1 Curtis, 8, 401.

*** 2179 * 8. Summons for production of documents admitted by answer.**

Commencement as before.] An application on the part of the above-named plaintiff that the above-named defendant may be ordered within — days after the service of the order to be made upon this application, to produce and leave with the _____, the documents admitted by his answer in this cause filed the — day of — to be in his possession, and set forth in the schedule thereto, with the usual directions.

[Conclusion as before.]

9. Summons to proceed with accounts, &c., directed by decree or order.

Commencement as before.] An application on the part of the above-named plaintiff to proceed with the accounts and inquiries [and other proceedings] directed by the — made in this cause dated the — day of —, 186—.

[Conclusion as before.]

10. Summons for order for accounting party to leave accounts.

Commencement as before.] An application on the part of the above-named plaintiff [or, defendant] that the above-named defendant [or, plaintiff] may be ordered, within — days from the service of the order to be made on this application, to leave at the — of — [situate] — an account [or, accounts] duly verified by affidavit of [here insert the words of the decree or order directing the account or accounts to be taken].

[Conclusion as before.]

11. Summons for order for leave to attend proceedings.

Commencement as before.] An application on the part of J. H. (the heir of J. H., deceased, in the pleadings named), that the said J. H. may be at liberty to attend the proceedings under the decree dated, &c., he undertaking to be bound thereby in the same manner as if he had been originally made a party to this suit.

[Conclusion as before.]

12. Summons to discharge Receiver and vacate recognizance.

Commencement as before.] An application on the part of the above-named plaintiff, that A. B., the person appointed in this cause to receive, &c., be discharged from being such Receiver, and that he do forthwith pass his final account, and pay the balance certified * 2180 * to be due thereon into the —, as directed by the decree in this cause, bearing date the — day of — [or, to the plaintiff A. B.], and thereupon that the recognizance, dated, &c., entered into by the said Receiver, and C. D. and E. F., as his sureties, may be vacated,

and that for such purpose the proper officer may be ordered to attend his honor, —— with the record of such recognizance.

[Conclusion as before.]

13. *Summons to substitute next friend.*

Commencement as before.] An application on the part of the above-named plaintiff, that [upon] A. B., of, &c. [giving security to answer the defendant's costs up to this time, in case the Court shall think fit to award any such security, to be settled by the Judge in case the parties differ], the said A. B. may be substituted as the next friend for the said plaintiff in the place of the above-named C. D.

[Conclusion as before.]

14. *Summons to proceed with Receiver's accounts.*

Commencement as before.] An application on the part of A. B., the Receiver appointed in this cause, pursuant to the decree dated the — day of —, and the order dated the — day of —, to pass his — account of rents and profits [and personal estate.]

[Conclusion as above.]

PART III. DECREES AND ORDERS.

CHAPTER XVII.

1. FORM OF INTRODUCTORY PART OF ORIGINAL DECREE AT THE HEARING OF THE CAUSE. [English Form.]

(a.) Lord Chancellor, or Lords Justices, or Master }
of the Rolls, or Vice-Chancellor Kindersley. } { Date and
Title.

THIS cause coming on (the — day of —, and) this day to be heard and debated before the Rt. Hon. the Lord High Chancellor of Great Britain [*or*, the Rt. Hon. the Lords Justices, *or*, the Rt. Hon. the Master of the Rolls, *or*, this Court], in the presence of counsel learned for the plaintiff and the defendants [*or if some of the defendants do not appear*, for the plaintiff and the defendants A. and B., no one appearing for the defendants C. and D., although they were duly served with a *subpoena* to hear judgment in this cause, as by the affidavit of, &c., filed the — day of —, appears]; and the pleadings in this cause being opened, upon debate of the matter and hearing [the said affidavit, &c., *enter the evidence*, if any, read, and] what was alleged by the counsel on both sides [*or*, for the plaintiff and the said defendants A. and B.], his Lordship [*or*, their Lordships, *or*, his Honor, *or*, this Court] doth [*or, do*] order and decree [*or, doth declare*¹], &c.

¹ The Court frequently prefacing its decrees by declarations of matters of fact, or of the right of the parties, and then proceeds to decree the consequent relief. Thus in decrees to execute the trusts of wills relating to real estate, the Court often declares the will to be well proved, and that the same ought to be established and the trusts thereof performed. And so where the Court gives effect to an agreement, or an equitable mortgage, or construes a will or other instrument, or sets an instrument aside, and in other cases. And where a party establishes his right to property, the direction to transfer it to him is often prefaced by a declaration of his title. Jenour v. Jenour,

10 Ves. 568; see Pingree v. Coffin, 12 Gray. 311. Until recently, it was not the practice of the Court of Chancery in England in ordinary suits to make a declaration of right, except as introductory to relief, which it proceeds to administer. But by a recent statute the Court was empowered, on a special case being stated for its opinion, to make such a declaration of it, without administering any consequent relief; and by a still more recent statute the Court may in any suit "make binding declarations of right without granting consequent relief."

Yet neither under this most recent act, nor otherwise, had the Court power to make a deo-

* (b.) [Circuit Courts of the United States.] * 2182

Circuit Court of the United States.

In Equity, May term, 1863.

G. I. F. v. W. W. G.

This cause came on to be heard [*or, to be further heard, as the case may be*] at this term, and was argued by counsel; and, thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows viz.:¹

(c.) *If standing for judgment.*

This Court did order that this cause should stand for judgment; and this cause standing for judgment this day, &c., in the presence of counsel learned for the plaintiff and defendants, this Court doth order [and decree], &c.

(d.) *Where defendant who has not entered an appearance, or a person not on the record appears at the hearing, and submits to be bound.*

And X., by his counsel now appearing, and submitting to be bound by the decree and proceedings in this cause, in the same manner as if he had duly entered an appearance to the plaintiff's bill [*or, had been originally made a defendant in this cause*], and the plaintiff [*or, all parties*] by his [*or, their*] counsel consenting thereto, this Court doth, &c.

loration of right, unless it could, if necessary, act on it by granting consequent relief. *Rooke v. L. Kensington*, 2 K. & J. 753; *Bristow v. Whittemore*, 1 John. 96; see *Baylies v. Payson*, 5 Allen, 473. Neither can the Court make declarations of future rights. *Langdale v. Briggs*, 4 W. R. 703; *Jackson v. Turnley*, 1 Drew. 617; *Hampton v. Holman*, 5 Ch. D. 183; *ante*, p. 1001. Nor merely declare a legal right. *Birkenhead Docks v. Laird*, 4 De G. M. & G. 722.

But, by an Act of Parliament later than those above referred to (22 & 23 Vic. c. 35, § 20), any trustee, executor, or administrator may by petition or summons apply for the opinion, advice, or direction of the Judge respecting the management or administration of the trust property, or the testator's or the intestate's assets, and acting thereon, so far as regards his own responsibility, shall be deemed to have discharged his duty. The practice and mode of proceeding under this Act is regulated by the general order, 20th March, 1860. For

various declaratory decrees, see *Mellick v. President &c. of the Asylum*, Jac. 180; *Hamley v. Gilbert*, Jac. 354; *Colpoys v. Colpoys*, id. 451; *Att.-Gen. v. Dean and Canons of Christ Church*, id. 474; *Mole v. Smith*, id. 490; *Arnold v. Congreve*, 1 Russ. & My. 209; *Barton v. Tallersall*, id. 237; *Campbell v. Graham*, id. 453; *Roberts v. Walker*, id. 752; *Bright v. Rowe*, 3 My. & K. 316; *Yates v. Maddan*, 16 Sim. 619; *Shelton v. Watson*, id. 546.

¹ This is the form prescribed by the 86th U. S. Equity Rule, which also provides that "in drawing up decrees and orders neither the bill nor answer nor other pleadings, nor any part thereof, nor the report of any Master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree or order shall begin in substance," &c. See earlier form of decree in Massachusetts, in which the substance of the bill and of the answer and the facts appearing are set forth. *American Academy of Arts and Sciences v. Harvard College*, 12 Gray, 599, 600, 601.

* 2183

*** 2. DECREE ON MOTION FOR DECREE.****(a.) [Date and title.]**

Upon motion this day made unto this Court, by counsel for the plaintiff, and upon hearing counsel for the defendants, this Court doth order (and decree), &c.

(b.) If standing for judgment.

This Court did order that the said motion should stand for judgment, and the said motion standing this day on the — for judgment in the presence of counsel for plaintiff and for the defendant, this Court doth, &c.

(c.) Decree on interlocutory motion treated as motion for decree.

Upon motion, &c., for [*state shortly the purport of the motion as for injunction or for a Receiver in this cause*], and upon hearing, &c., and the plaintiff and defendants by their counsel respectively consenting [*or, having respectively consented*] that this motion shall be treated as a motion for a decree, this Court, &c.

3. DECLARATORY DECREE ON SPECIAL CASE.**[English.]****(a.) [Date and title.]**

This special case coming on this day to be heard and debated before, &c., in the presence of counsel learned for plaintiff and defendants, upon debate of the matter, and hearing what was alleged by the counsel on both sides [*or, for, &c.*], this Court doth declare that, &c.

(b.) If the special case stands for judgment.

This Court ordered that this special case should stand for judgment, and the same standing, &c. [Form (b.) above, on this page.]

(c.) Declaratory decree on special case ; Court declining to answer one of the questions.

Upon reading the probate of the will of J. M., the testator in the special case named, and hearing what was alleged by counsel on both sides, this Court doth, as to the first of the questions submitted for the

opinion of the Court, declare that the defendant H. M. does take * 2184 under * the will of the said J. M., the testator, besides the legacy of \$—, and the stock, crops, and farming utensils by the said will specifically bequeathed to him, and a life-interest in the farm situated, &c., such interest as hereinafter mentioned in the residuary estate of the testator. And this Court being of opinion as to the second of the

said questions, that such question cannot properly be decided during the life of the defendant H. M., doth decline to decide the same; And this Court doth, as to the third of the said questions, declare that the said H. M. does take a ratable interest in the residuary estate of the testator in respect of the said legacy of \$____, but not in respect of the stock, crops, &c., by the said will specifically bequeathed to him. 1 Seton Dec. (Eng. ed. 1862) 34.

4. ORDER ON SPECIAL PETITION.

(a.) [Date and title.]

Upon the petition of, &c., on the ____ day of ____, preferred unto, &c., and upon hearing counsel for the petitioner [and for, &c., name the respondents, if any] and upon reading the said petition, this Court doth, &c.

(b.) Order on petition as to part adjourned.

[Date and title.]

Upon the petition of, &c., on the ____ day of ____, preferred unto, &c., the further consideration whereof was adjourned by the order dated the ____ day of ____, and upon hearing counsel for the petitioner and for, &c., and upon reading the said order, &c., this Court doth, &c.

5. ORDER ON SPECIAL MOTION.

(a.) [Date and title.]

Upon motion this day made unto, &c., by counsel for, &c., and upon hearing counsel for, &c., this Court doth, &c.

(b.) The like — on cross-motion.

[Date and title.]

Upon motion, &c., by counsel for, &c., that [recite plaintiff's notice], and upon motion, &c., by counsel for, &c., that, &c. [recite the cross-notice], and upon hearing what was alleged by the counsel on both sides, this Court doth, &c. 1 Seton Dec. (Eng. ed. 1862) 36.

* 6. INTRODUCTORY PART OF ORDER ON CAUSE COMING ON FOR * 2185 FURTHER CONSIDERATION.

This cause coming on for further consideration thereof, adjourned by the decree [or, order], dated, &c., in the presence of counsel for the plaintiff and defendants, upon opening and debate of the matter and hearing the said order and the Master's report, and what was alleged on both sides, this Court doth order, &c. Tripp's Forms (Eng. ed. 1858), 126. See more extended and particular form, 1 Seton Dec. (Eng. ed. 1862) 38.

7. USUAL DIRECTIONS.

(a.) Directions for reference to a Master.¹

It is ordered that it be referred to A. B., Esquire, Master, &c., to inquire and state to the Court, &c. And for the better discovery of the matters aforesaid, the parties are to produce before the said Master upon oath all deeds or books, papers, and writings in their custody or power relating thereto, and are to be examined, &c., as the said Master shall direct.²

(b.) Where account directed.

It is ordered that it be referred to A. B., &c., Master, &c., to take an account, &c. And for the better taking of the said account, and discovery of the matters aforesaid, the parties are to produce, &c., and are to be examined, &c., as the said Master shall direct, who in taking said account is to make unto the parties all just allowances.

(c.) General adjournment to chambers.

Let this cause [or matter, or petition, or application] be adjourned for consideration in chambers.

(d.) Particular reference. Accounts and inquiries. [Present English Form.]

Let the following accounts and inquiries be taken and made, that is to say, 1. An account, &c.; 2. An inquiry, &c.³

* 2186 * (e.) Liberty to state special circumstances.

And the Master is to be at liberty to state any special circumstances.

(f.) Separate report.

And let the Master be at liberty to make a separate report as to any of the matters aforesaid.

(g.) Directions to settle conveyances, &c., in case parties differ.

And the said Master is to settle the said conveyances, in case the parties differ about the same.

(h.) Further directions.

And this Court doth reserve the consideration of all further directions, until after the said Master shall have made his report.⁴

¹ For a decree giving specific and detailed instructions to the Master, see *March v. Eastern Railroad*, 43 N. H. 534, 535; and see 2 Dan. Ch. Pr. 1221, note.

² See *Pingree v. Coffin*, 12 Gray, 312; *March v. Eastern Railroad*, 43 N. H. 535; *Simmons v. Jacobs*, 52 Maine, 153.

³ Sometimes inquiries are directed expressly "without prejudice to any question in the cause." *Sharp v. Taylor*, 2 Phil. 809.

⁴ See *Pingree v. Coffin*, 12 Gray, 312, 313.

(i.) *Reservation of interest.*

And the Court doth reserve the consideration of, &c., and of interest until after the said Master shall have made his report.

(j.) *Reservation of costs.*

And this Court doth reserve the consideration of, &c., and of the costs of this suit, until after the said Master shall have made his report.

(k.) *Direction for taxation and payment of costs, &c.*

Let the Master tax all parties their costs in this suit. And it is ordered that such costs, when taxed, be paid as follows; viz., the plaintiffs' costs to Mr. ——, their solicitor, &c.

(l.) *Further consideration adjourned; liberty to apply.*

And let the further consideration of this [matter and] cause be adjourned; and any of the parties are to be at liberty to apply (to this Court) as they shall be advised.

(m.) *The like with liberty to apply in chambers as to particular matter.*

And let any of the parties be at liberty to apply in chambers for the appointment of a Receiver [or for, or as to, &c., as the case may be], and otherwise (generally) to apply as they may be advised.

* (n.) *If costs are partly dealt with by the decree.* * 2187

And let the further consideration of this cause, and of the costs of this cause not hereinbefore otherwise provided for [or, disposed of], be adjourned. Liberty to apply. 1 Seton Dec. (Eng. ed. 1862) 56.

(o.) *Payment of money by one party to another.*

Let (the defendant) A., on or before the —— day of —— (or, within —— days after service of this decree [or, order]), pay to (the plaintiff) B. the sum of \$——, appearing by, &c. [or, certified by, &c.], to be due to him in respect of, &c. [or, on the taking the accounts directed by, &c.].

(p.) *Payment of interest to life-tenant or his representatives.*

Let the interest during the life of (the plaintiff) A. to accrue on the, &c., be, from time to time, as the same shall accrue due, paid to (the plaintiff) A. [and, if so ordered, or to his legal personal representatives], or until further order.

(q.) *To trustees.*

Let the interest to accrue on, &c., be, from time to time, as the same shall accrue due, paid to the plaintiffs A. B., &c. (or any two of them), upon the trusts of the indenture of the —— day of ——, until further order.

(r.) *To corporation aggregate.*

Let the interest to accrue on, &c., be, from time to time, as the same shall accrue due, paid to the [insert the style or title of the corporation] until further order.

(s.) *Or to the treasurer.*

Let the interest to accrue on, &c., be, from time to time, as the same shall accrue due, paid to A. as the treasurer of [insert style or title of the corporation], and to the treasurer for the time being of the said [corporation], to be verified by affidavit until further order.

(t.) *To married woman for her separate use.*

Let the interest during the life of A., the wife of B., to accrue on, &c., be, from time to time, as the same shall accrue due, paid to the said A. for her separate use, until further order.

(u.) *To husband in right of his wife.*

Let the interest during the life of A., the wife of B., to accrue on, &c., be, from time to time, as the same shall accrue due, paid to the said B. in right of his said wife, until further order.

*2188 * 8. TAXATION AND PAYMENT OF COSTS BETWEEN PARTIES.

(a.) *Taxation and payment of costs by one party to another.*

Let the plaintiff (defendant) A. pay to the defendant (plaintiff) B. his costs of this cause (suit) [or, application], such costs to be taxed by, &c. (in case the parties differ).

(b.) *Plaintiff to pay one defendant's costs, and recover them with his own from a co-defendant.*

Tax the costs of the defendant A. of this cause (suit); And let the plaintiff B. pay to the defendant A. the amount of the said costs when so taxed. Tax the costs of the plaintiff of this cause (suit); And let what the plaintiff shall pay for the costs of the defendant A. be added to his own costs when so taxed; And let the —— certify the total amount thereof; And let the defendant E. pay to the plaintiff B. the amount so to be certified.

(c.) *Costs of application to be costs in the cause.*

And let the costs of the plaintiff [or petitioner, or defendant, or applicant, or all parties] of this application be costs in this cause.

(d.) *Petition dismissed with costs.*

This Court doth order that the said petition be dismissed with costs, to be paid by the petitioner A. to the said B. and C. [name respondents to receive costs], and taxed by the —— (in case the parties differ).

(e.) Tax and pay costs without prejudice how ultimately to be borne; costs made charge.

Tax the costs of the plaintiffs and defendants of this cause (suit); and let the plaintiff C. pay to the defendants respectively the amount of their said costs, when taxed, without prejudice to any question how such costs are ultimately to be borne; And let the plaintiffs' costs, and also the costs which the plaintiffs, or any of them, shall so pay to the defendants, be a lien (charge) on the estate of the testator in question in this cause.

(f.) No costs given on either side.

The Court doth not think fit to give any costs of this cause [or, application] on either side.

* *(g.) The like; as to part.*

And this Court doth not think fit to give any or either side, as to so much of the costs of this cause [or, application] as have been occasioned by, &c. [or, as relate to, &c., or, so far as such costs have been increased by, &c.¹].

(h.) Taxation of plaintiff's and defendant's respective costs of parts of suit, involving apportionment of general charges with set-off.

Tax the costs of the plaintiff in this cause (suit), except so much thereof as relates to the claim set up by him to, &c.; Tax the costs of the defendant, of so much of this cause (suit) as relates to the said claim; And let the Taxing Master set off the said costs of the plaintiff and of the defendant when so respectively taxed, and certify to which of them the balance after such set-off is due; And let such balance be paid by the party from whom to the party to whom the same shall be certified to be due.

(i.) Direction to like effect.

Tax the costs of the plaintiff of this suit (cause), except so far as such costs have been occasioned by the plaintiff setting up a claim to the whole of the debt in the bill mentioned. *Hardy v. Hull*, 17 Beav. 355.

(j.) Taxation of defendant's costs of suit with set-off of part caused by defendant's wrongful claim, including costs of co-defendants; husband and wife; on bill to redeem.

Tax the costs of the defendant P. (*mortgagee*) of this cause, except so far as the same relates to the claim made by him in respect of the sum of \$ — charged by the deeds dated, &c., in the bill mentioned, as a sum advanced to the plaintiff and to H. his wife, since deceased, on the occasion of making and executing the said deeds over and above and

¹ See 1 Seton (Eng. ed. 1862), 94, note.

beyond the sum of \$ — secured by the two promissory notes dated, &c., in the bill mentioned; Tax the costs of the defendants, W. and wife, of this cause; And let the plaintiff O. pay unto the defendant W. the costs of the said defendant W. and of his said wife when so taxed; And the, &c., is to inquire and certify how much of such costs of the defendant W. and wife (if any) have been occasioned by (relate to) the defendant P.'s said claim in respect of the said sum of \$ —, and he is also to tax the plaintiff his costs of this cause so far as the same have been occasioned by (relate to) the said claim of the defendant P. in respect of the said sum; And let such costs of the plaintiff when so taxed, together with what he shall have paid to the defendant W.

* 2190 for * the costs of the said defendant W., and of his said wife (if any), occasioned by (relating to) the said claim of the defendant P. in respect of the said sum of \$ —, be set off against the said costs of the defendant P. when taxed; And the, &c., is to certify to whom, after such set-off, the balance is due; And let the party from whom such balance shall be certified to be due pay the amount thereof to the other party. *Orange v. Pickford* (1860), 1 Seton Dec. (Eng. ed. 1862) 88.

(k.) *Taxation of costs, except so far as increased by particular claim, not involving apportionment of general charges.*

Tax the costs of the plaintiff (defendant) of this cause (suit), except so far as such costs have been increased by the plaintiff's claim to, &c. [or, plaintiff by his bill seeking, &c., or, defendant setting up, &c., or, claiming, &c.]; Tax the costs of plaintiff (defendant) of this cause (suit) so far only as the same have been increased by the said claim [or, the plaintiff by his bill seeking, &c., or, by the defendant setting up, &c., or claiming, &c.]. Directions for set-off and payment of balance, 1 Seton Dec. (Eng. ed. 1862) 89.

(l.) *Costs up to a particular time.*

Let the plaintiff A. pay to the defendant B. his costs of this cause (suit) up to this hearing [or this time, or the — day of — (when the defendant offered by, &c., in writing, to pay the amount sought to be recovered by the plaintiff, &c.)]; such costs to be taxed, &c.

(m.) *Costs to be paid by plaintiff and defendant respectively from and to a particular time. — Set-off.*

Tax the costs of the plaintiff G. of the first-mentioned cause, up to the — day of —, the date of the letter from the solicitor for the plaintiff in the second-mentioned cause in his said affidavit referred to; And tax the costs of the defendant L., incurred in the first-mentioned cause since the said — day of —, and also his costs of this application; And let the, &c., set off such costs of the plaintiff G. and of the defendant L., respectively, when so taxed, and certify to whom after such set-off the balance is due; And let the party from whom such balance shall be certified to be due pay the amount thereof to the other party. *Gresham v. Luke* (1860), 1 Seton Dec. (Eng. ed. 1862) 89.

(n.) Costs of suit taxed, and set off against sum due.

Tax the plaintiff his costs of this cause, &c.; and let such costs, when taxed, be set off against the sum of \$—, which the plaintiff by his bill admits to be due from him to the defendant under the agreement *dated, &c., in the bill mentioned, with \$— for interest * 2191 on the said sum at the rate of \$— per cent per annum, from the — day of — to the — day of —, the date of the filing of the bill, making together \$—; and let the, &c., certify to whom, after setting off the said costs when so taxed against the said sum of \$—, the balance is due; and let the party from whom the balance shall be certified to be due, within — months [or, days] after the date of the —'s certificate, pay the amount thereof to the other party. Liberty to apply. *Radley v. Ingram* (1860), 1 Seton Dec. (Eng. ed. 1862) 89.

(o.) The Master to look into petition and affidavits, and if improper or of unnecessary length, to distinguish and set off costs.

Direction to take account of what is due to petitioner under certain deeds, and to tax his costs of the application. — “And in taxing such costs, the Taxing Master is to look into the said petition and affidavits, and distinguish such parts thereof as shall appear to him to be (what parts thereof are) (improper, or) of unnecessary length; and ascertain the costs, if any, occasioned to the respondents by such part or parts thereof as may be distinguished as being (improper, or) of unnecessary length; and let such last-mentioned costs be deducted from the petitioner's costs of this application; and let the balance to be certified,” &c. *Re Radcliffe* (1856), 1 Seton Dec. (Eng. ed 1862) 89, 90.

9. TAXATION OF COSTS AND PAYMENT OUT OF FUNDS IN COURT.

(a.) Taxation of costs and payment to solicitors. [English Form.]

Refer it to the Taxing Master to [or, let the Taxing Master] tax the costs of the plaintiff and the defendants [or, all parties] of this cause (suit). (*If ordered, as between solicitor and client*) [or if ordered as to executor or trustee only, the costs of the defendant A., the executor, or, trustee of, &c., as between solicitor and client]; and let so much of the £— Bank £3 per cent Anns. standing in the name of the Accountant-General in trust in this cause [the account of, &c.] as with the £— cash in the bank, to the credit of this cause [the like account] will raise such costs when taxed, be sold; And let out of the money to arise by such sale and the said cash, such costs be paid as follows, viz., the costs of the plaintiffs to Mr. —, their solicitor, the costs of the defendant A. to Mr. —, his solicitor, and the costs of defendant B., &c., to Mr. — and Mr. —, his solicitors, or either of them.¹

¹ See *Frost v. Belmont*, 6 Allen, 164, 165. and discriminating directions, see *Mason v. Codwise*, 6 John. Ch. 297, 301.

* 2192. * (b.) *Taxation of costs of application ; payment out of cash.*

Tax the costs of the petitioner (applicant) and of, &c., of this application [*if so ordered*, and relating thereto, and consequent thereon], [*If so*, as between solicitor and client]; and let such costs, when taxed, be paid out of the \$— cash in the —, to the credit of this cause [the account of, &c.] in manner following, &c.

10. DECREES BY CONSENT.

This Court, &c., doth by consent order (and decree), &c.

or,

And the plaintiff and defendants A. and B. [*or, all parties*] by their counsel consenting to the following decree [*or, order*], this Court doth order (and decree), &c.¹

11. DECREE APPROVING AND CONFIRMING CERTAIN ACTS DONE AND MATTERS AGREED UPON BY THE PARTIES.

(*After reciting the acts done and matters agreed upon, proceed*) : It is therefore ordered, adjudged, and decreed, as and for the final decree in this 'cause, that the said statement of the said accounts and of the result of the said accounts, and the payments aforesaid to the said Samuel B. Parsons, and the receipts, releases, and discharges aforesaid, of and by the said Samuel B. Parsons to the said trustees, George Howland, Jr., Matthew Howland, and Edward W. Howland, be, and the same hereby are approved, ratified, and confirmed.

T. M., J. S. J. C.

12. RESERVING CASE FOR FULL COURT (MASS.).

(a.) Heard on bill, answer, evidence, and exhibits, and reserved thereon for the consideration [and determination] of the full ² Court.

Another Form.

(b.) Heard on demurrer (to the bill), and reserved for the consideration of the full Court.

13. APPEAL (MASS.).

Heard : bill dismissed ; plaintiff appeals.

¹ The second form should be used where the order contains several directions, all of which are consented to; in other cases the words "by consent" should preface the particular directions consented to. 1 Seton (Eng. ed. 1862) 21; 2 id. 1120.

² "Full Court" is uniformly the language of the Statutes of Massachusetts. Cases are sometimes reserved for the "whole Court;" but it is believed that there is no authority for this in any existing statute of the Commonwealth.

GENERAL SUBJECTS OF EQUITY.

1. ACCOUNT.

(a.) *General account. — Original decree. — Injunction continued. — Judgment to stand as security.*¹

THIS Court doth order and decree, that it be referred to A. B., Master [or, one of the Masters], &c., to take an account of all dealings and transactions between the plaintiff and the defendant; for the better clearing of which account the parties are to produce, &c., as the Master shall direct, who, in taking of the said account, is to make unto the parties all just allowances, and what, upon the balance of the said account, shall appear to be due, from either of the parties to the other of them is to be paid by the party from whom to the party to whom the same shall be reported to be due, within — months after the said Master shall have made his report, and the same shall have been confirmed [or, as the said Master shall direct]. And it is further ordered, that the injunction formerly granted in this cause, for stay of the defendant's proceedings at Law, be in the mean time continued and the defendant's judgment is to stand as security for payment of what, if anything, shall appear to be coming to him on the balance of the said account; and the Court doth reserve the consideration of the costs of this suit and of all further directions, until after the said Master shall have made his report, when either side is to be at liberty to apply, &c.²

(b.) *Direction for allowing stated account.*

And if in taking the said accounts the said Master shall find that any account has been settled between the said parties, the same is to stand [or, not to be disturbed].

(c.) *On bill by part-owner of a ship, for an account.*

This cause coming on, &c., this Court doth order, that an account be taken of all dealings and transactions of the defendant J. M'G., from

¹ The order by which a decree is referred to a Master constitutes the entire basis of his authority. *Simmons v. Jacobs*, 52 Maine, 153; *Gordon v. Hobart*, 2 Story, 260; *Stonington Savings Bank v. Davis*, 15 N. J. Eq. 31, 32; 2 Dan. Ch. Pr. 1221, note.

² For an extended form of decretal order

for taking an account, see *Consequa v. Fanning*, 3 John. Ch. 590.

A decree in Equity is to be construed with reference to the issue raised by the prayer for relief and the pleadings. *Graham v. Railroad Co.* 3 Wall. 704.

the first day of October, 1838, in relation to the ship or vessel * 2194 called * the "Jane," in the pleadings mentioned, and of all sums which have been received and properly expended by the said defendant in respect thereof, and in taking such account, all just allowances are to be made; and in case it shall appear that any account has been settled between the parties [or, the parties interested in the said ship in the plaintiff's bill mentioned], the same is not to be disturbed. And it is ordered that the further consideration of this cause do stand adjourned.

(d.) Decree setting aside stated accounts, and for general account.

(Inter alia.) This Court doth declare that the three stated accounts dated, &c., ought to be opened and set aside, and doth order and decree the same accordingly; and it is hereby referred to A. B., Master, &c., to take a general account of all dealings and transactions between the plaintiffs, or either of them, and the defendant; and also of the value of any timber, &c.; in the taking of which account, the Master is to make unto all parties all just allowances; and for the better taking of said account, &c. And it is ordered and decreed, that what shall be found due upon the balance of the said account from any of the parties to the other, or others of them, be (within, &c.) paid by the party or parties from whom, to the party or parties to whom the same shall be found to be due; and it is ordered and decreed that the said defendant do pay to the plaintiffs their costs of so much of the cause as relates to the setting aside the said stated accounts to be taxed, &c. And the Court doth reserve the consideration of the rest of the costs of this suit until after the said Master shall have made his report, and the said parties are to be at liberty to apply, as, &c.

(e.) Direction for leave to surcharge and falsify.

But any of the parties are to be at liberty to surcharge and falsify any of the items and charges therein, as they shall be advised.

(f.) Accounts to be conclusive, with leave to show errors.

Let the accounts, &c., as between, &c., be (considered as) *prima facie* conclusive, but with liberty to either party to show any error therein. English v. Baring, penned by Vice-Ch. Kindersley. 1 Seton Dec. (Eng. ed. 1862) 108, 109.

(g.) Release to stand as to sums received, and account stated, — with leave to surcharge and falsify.

Declare that the indenture of release of the — day of — shall stand only as a discharge for the several sums of money thereby stated to be retained by or paid to the several parties thereto as therein mentioned, and declare that the account in the said indenture mentioned, to be stated, shall stand, with liberty to the plaintiffs and defendants to surcharge and falsify the same. Directions for account. 1 Seton Dec. (Eng. ed. 1862) 108.

- * (h.) Reference to take account of funds in hands of an agent * 2195
of a foreign principal, said principal being the defendant, and the funds being claimed in Equity because they could not be come at, to be attached, &c. Agent claims lien for his costs, &c.

Supreme Judicial Court.

SUFFOLK, ss.

March term, 1857.

In Equity.

The Columbia Ins. Co. et al. Defendants.

Whereas, it has been made to appear to this Court, by the answer of the said defendants or otherwise, that at the time of the service of the *subpœna* and injunction upon the said H. E. in this case, he held in his hands certain funds and promissory notes of the said Columbia Insurance Company, as their agent; and that the said H. E. claims to have a lien thereon for a balance of account claimed by him to be due to him from said company, and also for the reasonable expenses and counsel fees to which he has been subjected in answering to this and other suits against the said company, and other liens:—

This Court doth order, that this cause be referred to G. S. H., Esq., as a Master in Chancery, who, after due notice and hearing of the parties, shall report to this Court what amount of funds and promissory notes or other *choses in action* belonging to said company were at the time of said *subpœna* and injunction, and what now are in the hands or possession of said H. E.; also what balance of account, if any, was due said H. E. from said company at the date of said service; what reasonable sum for counsel fees or other expenses the said H. E. has paid, or is liable to pay or be at, in answering this and other suits now pending against the said company; and also any other claims or demands which the said H. E. may have or may claim to hold as a lien upon said funds or property of said Columbia Insurance Company aforesaid.

By the Court,

April 27, 1857.

G. C. W., Clerk.

- (i.) Order of reference to Master ; account ; rests ; state special circumstances, &c.

On reading the pleadings in the above cause, and hearing the counsel of the respective parties, and on consideration thereof, it is ordered that it be referred to E. W., Esq., as a Master of this Court, to take an account of the dealings and transactions of and between the said parties under the several agreements set forth in the plaintiff's bill, and to * state what, upon the balance of said account, shall appear to be due from either party to the other. * 2196

And the said Master is to make rests in said accounts, and state whether any and what balances were due from either, and which of said parties to the other on the first day of April, A. D. 1850, as well as at the

period at which the plaintiff in his said bill alleges said mutual account to have terminated.

And said Master is authorized to state and report to the Court any special circumstances needful for explaining said account and his report thereof, and the evidence as to the time when said mutual account did terminate.

And for the better taking of said accounts, &c., the parties are required to produce, &c., and to be examined before said Master upon oath, either upon interrogatories or *viva voce*, or by each of said modes as the said Master may direct.

And all equities and further directions are reserved until the coming in of the report.

And the parties are at liberty to apply to the Court as occasion may require. *Foster v. Goddard*, U. S. C. Court, May T., 1857.

By the Court,

H. W. F., Clerk.

(j.) *The like, with order to report facts. — Objections to draft of report to be deemed waived, unless made in a specified time.*

(*Inter alia.*) "7. He will, on request of either party to this proceeding, report to the Court all the facts upon which he shall base his finding, on either of the points or particulars aforesaid."¹

Or thus: "And if either party so desire, the Master is directed to report any facts found by him (results of evidence, not evidence), pertinent to the matters hereby submitted."²

"8. All objections to the draft of the report not made to the Master within seven days after the same shall be ready for the examination of the parties, and notice thereof given, or within such further time as shall be allowed by the Master, shall be deemed to be waived."¹

(a.) *Where will proved.*

This Court doth declare, that the will of —, the testator in the bill [or, pleadings] named, dated, &c., is [or, and the codicil thereto, dated, &c., are] well proved, and that the same ought to be established, and the trusts thereof performed and carried into execution; and order and decree the same accordingly.

(b.) *Where admitted.*

The defendant H., the heir-at-law of —, the testator in the bill [or, pleadings] named, by his answer [or, counsel] admitting the due execution of the testator's will, dated, &c. [and of the codicil thereto, dated, &c.], this Court doth declare that the same ought to be estab-

¹ *March v. Eastern Railroad*, 43 N. H. 535.

matter shall arise, the Master may state the

² *Pingree v. Coffin*, 12 Gray, 312, 313.

same to the Court."

"And if, in ascertaining said facts, any special

March v. Eastern Railroad, 43 N. H. 535.

lished, and the trusts thereof performed and carried into execution, and doth order and decree the same accordingly. 1 Seton Dec. (Eng. ed. 1862) 224.

3. DEVISE AND APPOINTMENT.

(a.) *Devise declared good.*

Establish will. "And declare that the devises and limitations of the estates contained in the said will are good and valid in law." Thellusson v. Woodford, 13 Vesey, 207; 1 Seton Dec. (Eng. ed. 1862) 257.

(b.) *Declaration that real estate is charged with debts.*

And the testator having by his will charged his real estate with the payment of his debts, this Court doth declare that such debts ought to be made good out of such estate, as equitable assets.¹

(c.) *Declaration that a devise on a double contingency failed.*

This Court doth declare that the testator's daughter S., having died in his lifetime, under twenty-one years of age, but married, the devise over of the two messuages, &c., to the defendant E., her heirs and assigns, in the event of the death of the said S. under twenty-one and unmarried, did not take effect, and the said two messuages descended to the defendant I., the testator's heir-at-law, and that the same are by the said will charged with the testator's debts and funeral expenses. 1 Seton Dec. (Eng. ed. 1862) 257, 258.

* (d.) *Appointments by deed and will held valid.*

The Court doth "declare, that the property described and comprised in the indenture of the first of September, A. D. 1843, in the pleadings mentioned, became subject to the trusts therein expressed concerning the same respectively, and that the deed poll of the twenty-second September, A. D. 1843, in, &c., operated as an effectual appointment of the property thereby expressed to be appointed, and that it was not revoked by the will of M. in, &c., but that such will was a good execution of the power of revocation and appointment reserved by the indenture of the first of September, A. D. 1843, and that the same is an effectual appointment of all such parts of the property described and comprised in the indenture of the first of September, A. D. 1843, as were not appointed by the deed poll of the twenty-second September, 1843; And let the trusts of the said will and of the deed poll of the twenty-second September, A. D. 1843, so far as the same operated respectively by way of appointment of any property comprised in the indenture of the first day of September, 1843, be performed and carried into execution." Directions to execute the trusts, pay costs, and distribute estate. Buckell v. Blenckhorn, 5 Hare, 131; 1 Seton Dec. (Eng. ed. 1862) 259.

¹ For form of a decree in a creditor's suit claiming on a bond, to enforce a trust in the executors to whom the real estate was devised to be sold for the payment of debts, see Berg v. Radcliff, 6 John. Ch. 302, 311.

(e.) *Forfeiture declared.*

And the defendant A., by her counsel, admitting that she never has resided, and does not intend to reside, in the mansion-house situate, &c., the Court doth declare that according to the true construction of the will of G., the testator in, &c., the said defendant has forfeited the estate for life given to her by the said testator's will; and (by consent of the plaintiff by his counsel) doth declare that such forfeiture takes place from this day. *Dunne v. Dunne*, 3 S. & G. 22; 1 Seton Dec. (Eng. ed. 1862) 262.

4. DOMICILE AND LEX LOCI.

Inquiry as to persons entitled, under a gift to heirs, by the law of France.

And it is ordered [or, further ordered] that the said Master do inquire who by the laws of France were the persons interested and described in the will of R., in the pleadings mentioned, as his paternal and maternal heirs, entitled to share in the succession, living at his decease, and whether such persons are living or dead, and if any of them have died, who are or is entitled to their or his personal property.

* 2199 * 5. DIRECTIONS TO EXECUTOR TO PAY MORTGAGE OUT OF GENERAL ASSETS; COSTS.

SUFFOLK, ss.

Supreme Judicial Court,
In Equity.W. T. A., Executor, *v.* S. B. and others.¹

Decree.

And now after a full hearing and consideration it is ordered, adjudged, and decreed that the said W. T. A., executor of the will of T. W., take out of the general assets of the estate of said T. W., in his hands as such executor, a sum sufficient to pay the debt with interest thereon, which is secured by mortgage on the estate in D. Street named in the will, and therein specifically devised in trust; and a further sum sufficient to pay the costs of this suit taxed as between solicitor and client, to wit, the sum of two hundred and twenty dollars for the costs of the said executor, the sum of three hundred and eight dollars and seventy-five cents for the costs of the several respondents, S. B. and J. G. B., and the sum of three hundred and ten dollars for the costs of the residuary legatees; and that no part of the said mortgage debt, interest, or costs be paid out of the real or personal estate specifically devised by said will to the said W. T. A. in trust for the benefit of the said S. B. and J. G. B.

By the Court.

December 27, 1862.

G. C. W., Clerk.

¹ *Andrews v. Bishop*, 5 Allen, 490.

6. CONSTRUCTION OF WILL, DIRECTIONS TO EXECUTE.

This case came on to be heard and was argued by counsel, and the Court having considered the same do find and declare that the said E. J. is entitled to the household furniture and wearing apparel of the testator, and all his other chattels of personal use, as her own absolute property; that she is entitled to the income, during her widowhood, of all the rest of the personal estate, and that the executor is a trustee by implication to hold the principal, so long as the income is payable to her.

That she is also entitled to the possession and use of the real estate during her widowhood. That the principal of the personal estate, of which the widow is entitled to the income, is intestate estate, the right to which, at the death of the testator, vested in the persons entitled under the Statute of Distributions; that of this, if there were no children, one-half vested in the widow and her interest in the income of * her share merged in her vested remainder, and it may be paid * 2200 to her by the executor when his account is settled, and in order of distribution obtained in the Probate Court.

G. C. W., Clerk.

February 12, 1862.

7. DECREE SETTLING THE BASIS AND AMOUNT OF THE PRINCIPAL RESIDUARY FUND OF AN ESTATE; FIXING THE TIME WHEN THE INCOME OF THOSE ENTITLED SHALL BEGIN TO ACCRUE; COSTS AND CHARGES FOR AN AMOUNT AGREED, OUT OF THE PRINCIPAL FUND.

Supreme Judicial Court.

Suffolk, ss.

October Term, 1861.

A. M. K. et al. v. W. B. et al. In Equity.¹

And now, after full hearing had of the parties in the above-entitled cause, upon the bill, supplemental bill, and answers, and upon due consideration thereof, it is ordered, adjudged, and decreed by the Court, as follows: —

That the sums received by the defendants B. and G., executors and trustees, as the profits accruing by virtue of the interest of D. M. K. and his legal representatives in the special copartnership of H., B., & T., and the sums received by said defendants as profits upon leases, as set forth in their supplemental answer, amounting in all to one hundred and fourteen thousand three hundred and seven dollars and two cents (\$114,307.02), are not and shall not be accounted for or paid over by them as income of the residue of the estate of said D. M. K., under his will, but that the said sum, together with the sum of fifty thousand dollars, received by said executors, as the capital stock contributed by the said D. M. K. to said copartnership, are, and shall be, treated and accounted for as a part of the principal fund of the residue of said estate.

And it is further ordered, adjudged, and decreed that the plaintiff, and the parties entitled under said will to the income of said residue, shall

¹ *Kinmonth v. Brigham*, 5 Allen, 270.

be allowed income upon and out of said fund, from the date of the death of said D. M. K., viz., February 22, 1860; that for the purpose of determining the amount of said income, the said residuary fund shall be taken and valued as formed at that date; that each and every sum received by said B. and G., as aforesaid, whether as profits or capital, shall be valued by computing and ascertaining what sum, at interest

at six per cent per annum, with annual rests, from February * 2201 * 22, 1860, would amount to the sum actually received at the

time when it was received; that the amount of such valuation shall be deemed and accounted for as part of the principal residuary fund, and the amount of interest thereon, from February 22, 1860, up to the date of the receipt of such sum by the defendants, computed as above, shall be deemed accounted for, and paid over as income to the parties severally entitled to the income of said residue under said will. And that from and after the dates of the said several payments to said defendants, the income thereof actually realized by the defendants, from the investment of said sums, valued as above ordered, shall be accounted for and paid over as income to the several parties entitled thereto under said will.

And it being agreed by the counsel in said cause that the several sums received, as aforesaid, by the defendants, and the dates at which the same were received, and the valuation thereof made up, as aforesaid, as of February 22, 1860, are as follows, viz. : —

	Sums Received.	Valued as of Feb. 22, 1860.
1860. August 18	\$21,090.48	\$20,489.22
1861. February 15	18,688.76	17,650.33
1861. December 31	24,864.85	22,308.51
1862. April 26	29,447.64	25,931.51
1862. September 10	70,307.02	60,495.00
	<hr/> \$164,307.02	<hr/> \$146,874.57

Now, it is further ordered, adjudged, and decreed that the whole amount to be treated and accounted for by said B. and G., as the principal residuary fund, out of their receipts from the capital and profits of said copartnership, and the profits on said leases, is the said sum of one hundred and forty-six thousand eight hundred seventy-four $\frac{4}{100}$ dollars (\$146,874.57); and that the whole amount to be paid over or accounted for by them, as income out of their said receipts, is the sum of seventeen thousand four hundred thirty-two $\frac{44}{100}$ dollars (\$17,432.45); and that said amount be severally accounted for or paid over, as aforesaid, and that the income actually realized by said B. and G., upon said several sums, amounting to \$146,874.57, from and after the receipt and investment thereof by them, be accounted for by them as income of said residuary estate.

And it is further ordered, adjudged, and decreed that the costs and charges of this suit, including the fees of counsel of the several parties thareto, amounting in all, as agreed by counsel in the cause, to two thousand two hundred and twenty $\frac{12}{100}$ dollars, be paid by said B. and

G., out of the principal fund of said residuary estate in their hands, and be charged to said estate.

By the Court,

November 29, 1862.

G. C. W., Clerk.

* 8. DECREE DECLARING THE RIGHTS OF PARTIES UNDER A * 2202
WILL AND ORDER OF REFERENCE; FURTHER CONSID-
ERATION RESERVED UNTIL, &c.

Bristol, ss.

Supreme Judicial Court.

G. H., Jr., *et al.*, in Equity, v. E. W. H. *et al.*

This cause came on to be heard at the term of this Court held at T. within the county of B., and for the counties of B., P., B., and D. county, in the year 1858, upon the bill and answers of those of the defendants who were of full age, and upon the bill and answers by guardian *ad litem*, and the Master's report as to those of the defendants who were minors, and was argued by counsel and was continued for advisement. And after due consideration this Court is of the opinion and doth accordingly declare, that each and every grandchild, if any, of the testator, G. H., who was or shall be born after the sixteenth day of March, in the year 1857, the time of the filing of the bill, is not and will not be entitled to the legacy of five thousand dollars provided in and by the will of the said testator for each and every of his grandchildren, but is excluded utterly therefrom.

And it is further declared, that the defendant S. B. P., as the administrator and next of kin of his minor son J. B. P., deceased, is entitled to have and recover the said legacy of five thousand dollars provided in and by the will of the testator for the said J. B. P., deceased, and that the said S. B. P., as such administrator and next of kin and heir, is entitled to have and recover one-fourth part of the one-seventh part of all the rest, residue, and remainder of the property or estate of the testator which was devised and bequeathed to G. H., Jr., M. H., and E. W. H., and the survivors and survivor of them and their successors in trust among other things, to pay the income thereof or convey the principal to the children of the testator's deceased daughter, S. H. P., the late wife of the said S. B. P., and mother of the said minor child J. B. P., deceased.

And it is further declared, that the minor defendants, S. P., S. H. P., and G. H. P., took their respective legacies of \$5000 each, and upon the death of their mother, each of them an equitable vested interest in the one-fourth part respectively of the aforesaid one-seventh part of all the rest, residue, and remainder of the property or estate of the testator (which was devised and bequeathed in trust as aforesaid to said G. H., Jr., M. H., and E. W. H.), subject to the power of said trustees as to the payment of the income and the conveyance of the principal as set forth in said will.

And thereupon it is ordered that it be referred to —, Esq., of —,
2183

appointed a special Master in Chancery by the Court for the purposes of this order, in case the parties cannot agree about the same, to * 2203 state * the account of the said legacy of \$5000, bequeathed

to the said J. B. P., and of the said one-quarter of the one-seventh part of said rest, residue, and remainder of the property or estate of the testator to which the defendant S. B. P. is entitled as the administrator, next of kin, and heir-at-law of the said minor J. B. P., deceased, and to pass upon any other matter which may properly come before him, the said Master as a Master in Chancery, preparatory to entering a final decree, said Master's report to be made and filed in the clerk's office at T. as soon as may be.

And it is further ordered that all other matters be reserved until the coming in of the agreement of the parties or the Master's report.

Clerk.

9. DECREE DIRECTING AN ADMINISTRATOR *DE BONIS NON* HOW TO APPROPRIATE THE RESIDUE OF AN ESTATE IN PAYMENT OF LEGACIES.

Bristol, ss.

Supreme Judicial Court.

C. W. S., Ex'or, in Equity, v. H. B. S. and others.

At Chambers, in Boston, March 4, 1863.

And now the said C. W. S. having resigned and been removed from the office of executor, and J. W. having been appointed administrator *de bonis non* of the estate of said D. S., with the will annexed, and the said J. W., administrator, having voluntarily come in and made himself the party plaintiff to said bill, in the place of said C. W. S., executor;

It is ordered and decreed, that said administrator *de bonis non* with the will annexed, after making provision for the payment of the legacies mentioned in the first nine clauses of the said last will and testament of D. S., appropriate the residue of the estate to the payment of the legacies mentioned in the tenth clause of said will in manner following, viz., that out of said residue he pay the notes mentioned in said clause, as specific legacies chargeable upon said residue; and that he pay the balance of said residue in equal shares to the persons therein mentioned as legatees of the same in equal proportions.

The costs and expenses of this suit to be allowed by the Court and paid out of the funds in the hands of the administrator *de bonis non* with the will annexed.

G. T. B.,
Ch. Jus. Sup. Jud. Court.

*** 10. DECREE SUPPLEMENTAL TO THE ABOVE, AS TO COSTS.¹ * 2204**

Bristol, ss. **Supreme Judicial Court.**

Charles W. S., Ex'or, in Equity, v. H. B. S. and others.

At Chambers, in Boston, March 13, 1863.

And now it is ordered and decreed, by way of supplement to the decree passed at Chambers on the fourth day of March, 1863, that the defendants, H. B. S., F. O. S., G. E. S., and C. E. S., be allowed and paid out of the estate of the said D. S., the testator, by the said J. W., the administrator *de bonis non*, their costs as between solicitor and client, the sum of three hundred and fifty dollars; two hundred dollars of which to be paid to their counsel, I. F. R., Esquire, and one hundred and fifty dollars of which to be paid to their solicitors, Messrs. H. & G. E. W.; that the defendants, other than those above named, and other than said J. W., the administrator *de bonis non*, be allowed out of the estate of said testator by the administrator *de bonis non*, their costs as between solicitor and client, amounting to the sum of one hundred and twenty dollars, for counsel fees and disbursements to the Clerk of Court, and for services of the *subpœnas*, to be paid to C. I. R., Esq., their counsel; and that the said J. W., the administrator *de bonis non*, be allowed out of the estate of the testator, his costs and expenses of this suit, to wit: the sum of one hundred dollars paid to E. A., his counsel and solicitor.

G. T. B.,

Ch. Jus. Sup. Jud. Court.

By the Court.

11. DECREE DECLARING VOID CERTAIN TESTAMENTARY PAPERS, NOT BEING EXECUTED ACCORDING TO THE LAW OF THE TESTATOR'S DOMICILE AT HIS DECEASE; ORDERING THE PERSON HOLDING PROPERTY OF DECEASED FOR DISPOSITION ACCORDING TO SAID TESTAMENTARY PAPERS TO PAY OVER TO THE ADMINISTRATOR OF DECEASED.

"That the said Sir J. C., in the bill mentioned, at the time of the writing, and executing the letters mentioned in the said bill, and also at the time of his death, was domiciled in the Province of New Brunswick, and that the letters aforesaid purport to be, and are, testamentary papers; and that the legal validity and interpretation thereof are to be governed and adjudged by the laws of said Province; and that * the same not being executed so as to be binding as a will and * 2205 testament by the laws of the said Province, they are to be deemed to all intents and purposes as testamentary papers, a mere nullity, and of no effect, and that the said Sir J. C. is, therefore, to be deemed to have died intestate; and that the said T. C. G., having been duly appointed administrator of the goods and effects of the said Sir J. C., is

¹ In reference to the authority for this proceeding, see *ante*, Vol. II. p. 1030, and note 6.

entitled to have and hold as such, the assets of the said Sir J. C., now in the hands of the said W. A., as in his answer is stated and admitted. And it is thereupon ordered and decreed by the Court that the said W. A. do forthwith pay over the same to the said T. C. G., as administrator, deducting therefrom the amount which shall be awarded to him as costs in this cause by the Court, as hereinafter stated. And the Court do further order and decree that the said W. A. be allowed his reasonable costs, as between client and solicitor in this cause to be settled, in case of difference between the parties, by a Master of the Court. And that the defendants Jacob A. H. and Julia A. H. his wife do neither receive nor pay any costs; and that the costs of said T. C. G., in the cause, be a charge upon the assets to be received in pursuance of this decree." *Grattan v. Appleton*, U. S. Circuit Ct. 3 Story, 767.

12. EXECUTION OF POWER MADE GOOD.

(a.) *Defect of execution of appointment by will supplied.*

The Court doth declare, that the will of M. L., widow, deceased, in the pleadings, &c., is, notwithstanding the defect in the execution thereof, a valid execution of the power of appointment given her by the will of J. L., the testator in the pleadings, &c., and that under such will of the said M. L., her daughters, the defendants, M. B., &c., are entitled absolutely to the, &c., and cash carried over in trust in and to the credit of the cause L. v. L., to "The disputed appointment accounts of the said defendants respectively," as in the pleadings mentioned, subject to the payment thereout of the costs of all parties of this suit *pro rata*. Tax all parties' costs of suit, as between solicitor and client. Liberty to apply. *Lucena v. Barnewall*, 5 Beav. 249; 1 Seton Dec. (Eng. ed. 1862) 287.

(b.) *Inquiry as to exercise of power to appoint.*

And it is ordered [or, further ordered] that the said Master do inquire whether the testatrix executed any deed or deeds other than those mentioned in the pleadings, which operates or operate as an appointment of her real estate, or of any, and what part thereof pursuant to the power contained in the indenture dated, &c., and if so, what is the nature and effect thereof. 1 Seton Dec. (Eng. ed. 1862) 287.

(a.) *Will established, except as to legacies partly failing.*

The Court doth declare that the will ought to be established, &c., except as to so much of the charity legacies thereby bequeathed as are directed to be paid out of the money to arise by sale of the testator's real and leasehold estates, or to come out of any mortgages or chattels real belonging to the testator, and decree the same accordingly; and as to so much of the said charity legacies as is directed to be paid out of the money to arise by sale of the said freehold and leasehold estates,

the Court doth declare that the same is void, as being contrary to the statute passed in the ninth year of the reign of his late Majesty King George II., entitled "An Act to restrain the disposition of lands, whereby the same became alienable." 1 Seton Dec. (Eng. ed. 1862) 329.

(b.) *Will established, — except as to charity devise.*

Established will. "Except as to the devise of the testator's real estate, in the event in the said will mentioned, to the use of, &c., in charity, and declare that such devise is void by the statute, &c."

(c.) *Gifts by deed and will in charity declared void.*

The Court doth declare, that the charitable gifts contained in the indenture of, &c., and the will of the same date of C., the testator in, &c., so far as such gifts are payable out of his real estate or personal estate savoring of realty (which has arisen from or is connected with land) are null and void by the statute, &c. 1 Seton Dec. (Eng. ed. 1862) 330.

(d.) *Inquiries as to charities and their treasurers.*

And it is ordered [or, further ordered] that the said Master do inquire what are the several charitable institutions intended in the residuary bequests contained in the will of the testatrix; and who are the present treasurers of such charitable institutions respectively; and in case there shall be no such treasurer, then who are the trustees or managers thereof respectively.

(e.) *Inquiries as to charities and lands in mortmain.*

And it is further ordered that the said Master do inquire, whether there were or was at the testator's decease, any and what ragged schools or ragged school established, and in operation at S., in the county of G., and whether any and which of them are or is still in operation, and if so, what are or is the nature and constitution of such charities respectively; and that said Master do also inquire, whether there was, at the testator's decease, any and what land belonging to or vested in the *college in his will named, called Morden College, Black- * 2207 heath, sufficient and available for the purpose of a library being built thereon, such inquiries to be without prejudice to any question as to the validity or effect of any bequest contained in the testator's will and codicils, or any of them. 1 Seton Dec. (Eng. ed. 1862) 333.

14. ADMINISTERING CHARITY. — ORIGINAL DECREE.

(a.) *Decree for scheme for regulating charity; new trustees; inquiry as to value, income, and letting property; rents.¹*

Let a scheme for the future regulation and management (administration) of the charity in the pleadings mentioned, and the application of

¹ For substance of bill requesting that a new scheme may be devised to effectuate the general purposes of the donor, see American Academy of Arts and Sciences v. Harvard College, 12 Gray, 582.

the present and future income thereof be settled by, &c.; 2. And let new trustees be appointed for the management (administration) of the said charity, and of the estates (funds) and property thereof; and let provision be made in the said scheme for the future appointment of trustees; and let the following inquiries and account be taken and made, that is to say: 3. An inquiry of what the property of the said charity consists, and where the same is situate, and what is the income and annual value thereof, and how, and by whom, and under and upon what terms, rents, and conditions the same and every part thereof is let and is now held; 4. An account of the rents and profits of the charity estates received by the defendants or by any other person, &c., and of the application thereof from the — day of —, the date of the filing the information in this cause. Adjourn, &c. Att'y-Genl. v. Ilchester, 1 Seton Dec. (Eng. ed. 1862) 342, 343.

(b.) *Directions for scheme — for regulating charity.*

Let a scheme for the (future) regulation and management (administration) of the charity in the pleadings (petition) mentioned [and of the estates (funds) and property thereof, or, and for the application of the income and the selection of fit objects thereof, or, and filling up any vacancy in the number of the trustees] be settled, &c. 1 Seton Dec. (Eng. ed. 1862) 343.

(c.) *Another form.*

Let the cause be referred to a Master to report a scheme for the accomplishment of this purpose (*the purpose declared*), to be laid before the Court for its consideration, and all further directions are reserved.²

* 2208 * 15. ADMINISTERING CHARITY.—FURTHER ORDER.

(a.) *Order adopting new scheme filed.*

Let the scheme dated, &c., which has been approved (and signed) by the, &c., and filed in the, &c., of this Court, be the scheme for the (future) regulation and management (administration) of the charity in, &c., mentioned, and the estates (funds or property), and for the application of the income (selection of the objects) thereof [*if required*, and let the several persons in the said scheme named be appointed trustees of the said charity]. Directions to tax and pay costs and expenses. 1 Seton Dec. (Eng. ed. 1862) 347.

(b.) *The like. — Another form.*

Let the scheme dated, &c., for the (future) regulation and management, &c., of the charity in question (and of the estates, funds, and

² American Academy of Arts and Sciences v. Harvard College, 12 Gray, 582, 599. See Jackson v. Phillips, 14 Allen, 539, 596-599.

property thereof), which has been approved by the Court, and filed in the, &c., of this Court, be carried into effect. 1 Seton Dec. (Eng. ed. 1862) 347.

(c.) *The like. — Another form.¹*

(*Inter Alia.*) Whereupon it was ordered by the Court that the matter be referred to one of the Masters in Chancery, to report a scheme for carrying into effect the *general charitable intent and purpose of the donor, conformably to the* prayer of the plaintiff's bill; and now J. B. D., Esq., one of the Masters in Chancery for the county of S., having reported a scheme in pursuance of said order, which, being heard and considered by the Court, and no objection being made thereto by the defendants, *the same appearing reasonable and conformable to the general intent of the donor,* is accepted, and it is therefore by the Court ordered, adjudged, and decreed, for the reasons set forth in the bill, that the plaintiffs be, and they are, by the authority of this Court empowered to make from the income of said fund as it now exists, at any annual meeting of the Academy, instead of biennially as directed by the said Benjamin Count Rumford, award of a gold and silver medal, being together of the intrinsic value of three hundred dollars, as a premium to the author of any important discovery or useful improvement on heat, or on light, which shall have been made and published by printing, or in any way made known to the public, in any part of the continent of America, or any of the American Islands, preference being always given to such discoveries as shall, in the opinion of the Academy, tend most to promote the good of mankind; and to add to such medals as a further reward and premium for such discovery or improvement, if the plaintiffs see fit so to do, a sum of money not exceeding three hundred dollars.

* "And it is further ordered, adjudged, and decreed, that the * 2209 plaintiffs may appropriate from time to time, as the same can advantageously be done, the residue of the income of said fund, hereafter to be received, and not so as aforesaid awarded in premiums, to the purchase of such books and papers and philosophical apparatus (to be the property of the said Academy), and in making such publications, or procuring such lectures, experiments, or investigations as shall in their opinion best facilitate and encourage the making of discoveries and improvements which may merit the premiums so as aforesaid to be by them awarded. And that the books, papers, and apparatus so purchased shall be used, and such lectures, experiments, and investigations be delivered and made, either in the said Academy or elsewhere as the plaintiffs shall think best adapted to promote such discoveries and improvements as aforesaid, and either by the Rumford Professor of Harvard University, or by any other person or persons, as the plaintiffs shall from time to time deem best.

"And it is further ordered, adjudged, and decreed that the said fund, or any part thereof, may be from time to time invested by the plaintiffs

¹ *American Academy of Arts and Sciences v. Harvard College, 12 Gray, 601, 602.*

either in notes, stocks, or debts of the United States, or of the Commonwealth of Massachusetts, or of the city of Boston, or in stock of the Bank of the United States, or of any bank in this Commonwealth, or in notes or bonds secured by pledge of any of said stocks, or by mortgage of real estate in this Commonwealth, or may be deposited in trust and on interest with the Massachusetts Hospital Life Insurance Company."

The original gift was of "stock in the funds of the United States of North America," and accumulations were directed to be invested in the same funds; as to which the Court make this declaration.

(*Inter Alia*), "It also appears to the Court that it would tend to promote the general charitable intent of the donor to allow the plaintiffs to invest the principal of the said fund in some safe and productive securities other than the stocks of the United States."

(d.) Reference to Master to report scheme, and decree thereupon.

Let the case be referred to E. A., Esq., Master in Chancery, to report a scheme for the administration of the trust, set forth in the bill, by the town of M., *as near as possible* in conformity to the intent of the testator, especially keeping in view that the income of the fund is to be applied for educational purposes, "distinct from the public schools of the town."

And now the report of the Master in Chancery, to whom it was referred to report a scheme, &c., as set out in the interlocutory decree passed at the October term of this Court, for the year 1867, having come in, describing the property held by the plaintiffs the

* 2210 present *trustees under the will of the late Z. M. B., it is ordered that said report be accepted; and it is thereupon further ordered, adjudged, and decreed that the present trustees, the plaintiffs, H. B., N. H. B., L. Le B., and J. R. T., do, and they are hereby required to, transfer the principal sum of the property so held by them in trust, to the inhabitants of the town of M., in their corporate capacity as a town, upon the trusts to apply the same to the purposes of education in higher branches than are taught in primary schools, for the benefit of the youth of the town of M., and distinct from the public schools of said town; and that upon such transfer by said trustees to the town of M., then the said trustees be and they shall be thereupon discharged from their said office and duty as trustees.

And it is further adjudged and decreed that no part of the principal sum aforesaid, to wit, the deposits in the three savings banks mentioned in the Master's report, amounting to \$3000, and the United States bonds amounting on the face thereof to \$4900, as mentioned in the Master's report, ought ever to be invested or expended either in building or purchasing a school-house, or expended in any way; but that said principal sum shall always be kept invested by said town to produce income or interest either in United States securities, State securities, county securities or securities of towns other than of said town of M., or in savings banks duly created by law; and that the income or interest

shall be collected as it accrues by the town treasurer of M., who shall keep a separate and distinct account thereof and make a report thereof annually to the town, as part of the treasurer's report; and that the income or interest so received by the town treasurer, shall be by him paid out in maintaining forever the school hereafter mentioned, to be called the "Barstow School," in honor of the founder, as long a time each year as the income will sustain such school.

And it is further ordered, adjudged, and decreed that the general school committee for the time being of the town of M., shall be, and they hereby are, always required, from time to time, after examination, to give certificates of admission into said school to all scholars in said town whom they shall find sufficiently advanced in their studies to enter a high school; and that said general school committee shall procure a suitable school-room and seats for scholars on the best terms they can, provided the town or individuals shall not furnish the same without charge to the income of said fund, and cause said school-room to be properly warmed, when the school shall be kept in cold weather, provided such warming shall not be done by the town or by individuals without charge to the income of said fund; and said general school committee shall, distinct from the public schools of said town, employ a teacher competent to teach the higher branches, such portion of each year as the income of said fund so held in trust by said town will sustain the said school; and that the general school committee of said *town of M. shall act as overseers of said school, and * 2211 audit and allow the just and reasonable accounts of the expenditure for sustaining said school, and draw orders for the payment thereof, upon the treasurer of the town, not exceeding the amount of income on hand at the time of drawing such orders in favor of persons entitled thereto.

And it is further ordered and decreed that the plaintiffs, the present trustees, do pay out of the income now in their hands amounting to \$646.11, the sum of one hundred dollars to R. C. P., Esq., for his services as solicitor and counsel for the plaintiffs; the sum of one hundred dollars to C. T. B., Esq., for his services as solicitor and counsel for the defendants; the sum of one hundred dollars to E. A., Esq., for his services as Master in Chancery, and expenses of travel to M., and N. B., at the hearing, and for preparing and reporting the scheme, and framing decree; twenty-five dollars to pay the printer for printing the pleadings, and case for the full Court, at Law term; fifteen dollars and eighty cents to W. H. W., Esq., clerk of the Courts, for his entry, term fees, preparing papers for Law term for all the Judges and recording; and one dollar and seventy cents more for an attested copy of this decree to be furnished the town clerk of M., for record; and thirteen dollars and seventy cents for certain disbursements by said C. T. B., Esq., in his said service as solicitor and attorney and counsel as aforesaid; the balance of said \$646.11 over and beyond said sums to be paid over by the plaintiffs, said trustees, into the hands of the town treasurer, to be expended with income hereafter to be received in carrying on said school as hereinbefore directed.

And either of the parties to this suit may apply to the Court upon the foot of this decree as occasion may require.

By the Court,

E. R. H., J. S. J. C.

(e.) *Extract from scheme constituting a charity as to appointment of trustees, &c.*

1. The full number of the trustees of the charity shall be twelve, and A. B., of &c., and, &c., shall be the first trustees; 2. It shall be lawful for any trustee to resign his office by a notice in writing, given to the clerk of the charity, to be appointed as hereinafter mentioned, and, independently of death or resignation, the office of any trustee who shall become incapable to act, or shall wholly cease to act, for the period of two years, or shall become bankrupt, or take the benefit of any act for the relief of insolvent debtors, or, except as to any of the above-named persons now residing at a greater distance, shall cease to reside within the county of W., shall *ipso facto* become vacant. 3. Whenever the number of trustees shall be reduced to or below five, the surviving or continuing trustees shall apply in Chambers to the * Judge of the Court of Chancery, to whose Court these causes may be attached for the appointment of new trustees, and so many new trustees shall be appointed by such Judge as may be necessary to make up the original number of twelve trustees, and directions shall thereupon be given for vesting the property of the charity, other than Government stock (in the whole body of trustees as newly constituted by virtue of such appointment). 1 Seton Dec. (Eng. ed. 1862) 348.

(f.) *Apportionment of costs.*

And let the costs of this application and consequent thereon be apportioned ratably among the said several charities, according to the annual income thereof respectively; and let the amounts apportioned in respect of such costs be paid out of any funds in hand belonging to the said several charities, or out of the annual income thereof respectively. 1 Seton Dec. (Eng. ed. 1862) 350.

(g.) *Relator's extra costs of suit out of charity funds.*

Let the defendants, the Coopers' Company, reimburse to the petitioners, the relators, out of the charity funds, the costs and expenses incurred by the petitioners in this cause, over and beyond the costs which have been paid by the defendants, the Coopers' Company, as between party and party; and let the Taxing Master inquire whether any costs and expenses have been properly incurred by the petitioners, other than the costs of this cause, relating to the matters in question, and tax and certify the same respectively; and let the defendants, the

Coopers' Company, pay the amount (if any) that the Taxing Master shall certify to have been so properly incurred, out of the said charity funds. 1 Seton Dec. 350.

(h.) Order to tax costs of Attorney-General separately from relators; on petition.

Tax as between solicitor and client, the costs of all parties to these suits, including the costs of the Attorney-General of appearing separately from the relators, of the orders of the 7th day of February, A. D. 1851, and consequent thereon, from the foot of the former taxation, and also the costs of all parties relating to this application; and let so much of the, &c., as will raise the said costs when taxed, be sold, &c.; and let, with the money to arise by such sale, such costs be paid in manner following: that is to say, the costs of the petitioner to Mr. —, the relator's solicitor; the costs of the Attorney-General separately from the relators to Mr. H. H. R., his solicitor; the costs of the defendants, the confrater and poor of the hospital, to Mr. —, their solicitor; and the costs of the defendant V. to Mr. —, his solicitor. 1 Seton Dec. 351.

* 16. MORTGAGES.— FORECLOSURE.

(a.) Foreclosure at hearing: mortgagor in possession.

The Court doth order and decree, that it be referred to A. B., Esquire, Master, &c., to compute what is due to the plaintiff, for principal and interest on his mortgage in the pleadings mentioned, and for his costs of this cause, such costs to be taxed, &c.; and upon the defendant's paying to the plaintiff what shall be reported due to him for principal, interest, and costs as aforesaid, within — months after the said Master shall have made his report, at such time and place as said Master shall appoint, it is ordered, that the said plaintiff do reconvey [resurrender, reassign] the mortgaged premises free and clear of all incumbrances done by him, or any claiming by, from, or under him [or, by those under whom he claims], and deliver up upon oath all deeds and writings in his custody or power relating thereto, to the defendant, or to whom he shall appoint. But in default of the said defendant's paying to the plaintiff such principal, interest, and costs as aforesaid, by the time aforesaid, it is ordered and decreed that the said defendant from thenceforth do stand absolutely debarred and foreclosed of and from all [right, title, interest, and] equity of redemption of, in, and to the mortgaged premises. Liberty to apply.

(b.) Foreclosure, mortgagee in possession; costs; repairs; improvements; rents and profits; reconveyance; default; infant.

It is ordered, that the plaintiff's bill do stand dismissed as against the defendant H. S., with costs, and that it be referred to, &c., of this

Court to tax the said costs; and it is ordered, that the plaintiff R. H. do pay to the said defendant his costs when taxed, and what the plaintiff shall so pay is to be added to his own costs, to be taxed as hereinafter directed; and it is ordered that it be referred to G. F. C., Esq., Master, &c., to take the following accounts; that is to say: 1. An account of what is due for principal and interest on the security of the premises comprised in the indenture [or, deed], dated, &c. 2. An account of all sums of money paid, laid out, and expended by the said W. M. or the plaintiff [*transferee of the mortgage*] for fines, fees, and costs, &c.; and of all sums of money paid, laid out, or expended by the plaintiff in necessary repairs¹ and lasting improvements of the premises

* 2214 * comprised in the said indenture [or, deed] of mortgage of, &c.; and in taking the said account, interest is to be computed on the money paid for fines and fees on renewal, and the charges attending the same, and laid out in repairs and lasting improvements, after the same rate of interest as the said mortgage carried; and what shall appear to be due on the said account is to be added to what shall be found due for principal and interest on the said mortgage. 3. An account of the rents and profits of the premises comprised in the indenture [or, deed] of, &c., or which without wilful default of the plaintiff might have been received; and what shall be found due from the plaintiff on taking the said account is to be deducted from what shall be found due to him for principal and interest as aforesaid; and in taking the said accounts all just allowances are to be made.

And it is ordered, that it be referred to the said — to tax the plaintiff his costs of this suit.

And it is ordered, that upon the defendants, or any of them, paying to the plaintiff what shall be found to be due to him for principal and interest as aforesaid, together with his costs of this suit, within (six) months after the same shall have been certified, at such time and place as shall be appointed, the plaintiff do reconvey and reassign the mortgaged premises for all the plaintiff's interest therein to the defendants or such of them as shall redeem, free and clear of all incumbrances done by the said W. M., or the plaintiff, or any person claiming by, from, or under them or either of them, and do deliver up all deeds and writings in the custody or power of the plaintiff relating thereto, upon oath, to the said defendants or such of them as shall redeem, or to whom they shall appoint.

But it is ordered, that in default of the defendants paying unto the plaintiff such principal, interest, and costs as aforesaid by the time aforesaid, the defendants shall stand absolutely debarred and foreclosed of

¹ In order to entitle the mortgagee to an inquiry as to repairs and lasting improvements, he must establish a case for such inquiry at the hearing. Sandon v. Hooper, 6 Beav. 246; Norton v. Cooper, 25 L. J. Ch. 121. Where two estates, Whiteacre and Blackacre, are mortgaged to A., and afterwards the mortgagor mortgages Whiteacre alone to B., B. is entitled to have the securities marshalled, so as to

throw A.'s mortgage, in the first instance, on Blackacre. Gibson v. Seagrim, 20 Beav. 614. The plaintiff must take care, neither personally nor by his agent, to receive any rents after the date of the Master's report; otherwise he will not be entitled to obtain the order absolute in case of non-payment at the time appointed, or if he should obtain the order, it will, upon application for that purpose, be discharged.

and from all equity of redemption of, in, and to the said mortgaged premises comprised in the said indenture [*or, deed*], &c.

And the said decree is to be binding on the infant defendant A. N., unless he, being served with a *subpœna* to show cause against the same, shall within six months after he should attain his age of twenty-one years, show unto this Court good cause to the contrary.¹ [See Tripp's Forms, 134.]

(c.) *Direction to ascertain damages.*

The Master is also to "ascertain what shall be allowed as a sufficient compensation for the damage done to the estate in question by the destruction of the deeds as found by his report, and the amount of * what the Master shall find to be proper to be allowed for compensation as aforesaid, is to be set off against what shall be found due for principal and interest," and upon the payment, &c., of what shall be found due, &c., "after deducting therefrom the amount of such compensation," &c., &c. Hornby v. Matcham, 16 Sim. 327.

(d.) *Sale in default of payment.*

Usual account: Direction for payment to plaintiff, and reconveyance by him. "But in default of defendants paying to the plaintiff, &c., it is ordered and decreed that the said mortgaged premises, or a competent part thereof, be sold with the approbation of the Master; and that the money to arise by such sale be applied in payment of what shall appear to be due to the plaintiff for principal, interest, and costs, as aforesaid, and be in the mean time paid into, &c., to the credit of this cause." Adjourn, &c.

(e.) *Final foreclosure.*

Upon motion, &c., by counsel for the plaintiff, who alleged that by the decree, dated, &c., it was ordered, that it be referred to A. B., Esquire, Master, &c., to take an account, &c., that in pursuance of said decree the said Master on the — day of —, made his report, and thereby certified that there would be due to the plaintiff for principal and interest on his said mortgage, and for his costs, &c., on the — day of —, the sum of \$—, which the said defendant was thereby appointed to pay to the plaintiff on, &c., at, &c., between, &c.; that it appears by the affidavit of the plaintiff, filed, &c., that he did attend on the said — day of —, at, &c., from before the hour of — till after the hour of — of that day, in order to receive from the defendant the said sum of \$—, but the said defendant did not, nor did any person on his behalf, attend

¹ See Clark v. Reyburn, 8 Wall. 318. With regard to accounts for repairs, lasting improvements, waste, &c., see *post*, under *Forms for Redemption*.

In Hunter v. Myatt, 28 Ch. D. 181, the form

of judgment in Grundy v. Grice, 2 Seton (4th ed.), 1036, No. 2, in a foreclosure suit when personal judgement is taken against the mortgagor on his covenant for payment of principal and interest, is modified.

to pay the said sum, and that the said sum hath not, nor hath any part thereof, been since paid to the plaintiff, but that the whole thereof still remains due and owing; and upon reading the said decree, report, and affidavit, this Court doth order that the defendant do from henceforth stand absolutely debarred and foreclosed of and from all [right, title, interest, and] equity of redemption of, in, and to the said mortgaged premises.¹ [*Take the words of the decree.*]

* 2216

*** 17. EQUITABLE MORTGAGES.***(a.) Decree for specific performance of agreement to execute a mortgage.*

Declare, that the agreement made, &c., and dated, &c., ought to be specifically performed and carried into execution; and decree the same accordingly; and let the defendant execute to the plaintiffs a proper deed of mortgage of the estate mentioned in the said agreement, according to the terms of the said agreement; and let all proper parties join therein as the Judge [this Court, or the Master] shall direct; and let such indenture of mortgage be settled by the Judge [this Court, or the Master], &c., in case the parties differ; and let the defendant deliver upon oath to the plaintiff the title deeds and documents of title relating to the said estate which are now in his possession or power; and let the defendant pay to the plaintiff his costs of this cause (including the costs of such deed of mortgage), such costs to be taxed, &c. Liberty to apply.

1 Seton Dec. 443.

(b.) Decree for absolute conveyance, free from all equity of redemption.

“Declare, that the title deeds relating to the estate in question, having been deposited by A., the bankrupt, in the hands of the plaintiff, the plaintiff is entitled to be considered in this Court as if he were a mortgagee of the premises therein comprised; and decree the same accordingly; and let an account be taken of what is due for principal money advanced on the said deposit, and for interest thereon, and for his costs of this suit, to be taxed, &c.; and declare that such principal, interest, and costs are to be considered as a charge upon the said premises; and let, upon the defendant T. paying to the plaintiff, within — months after, &c., at such place, &c., the plaintiff deliver up all deeds, &c.; but declare, that in default, &c., the plaintiff will be entitled to the said premises, free and clear of and from all right, title, interest, and equity of redemption of, in, and to the same, and to have an absolute conveyance thereof accordingly; and in that case, let the defendant execute such conveyance thereof to the plaintiff to be settled by, &c., in case the parties differ.” Liberty to apply. 1 Seton Dec. (Eng. ed. 1862) 443, 444.

(c.) Like decree — with Receiver.

Directions to appoint Receiver. “And let the person so to be appointed pass his accounts, &c., and pay the balances which shall be

¹ See Clark v. Reyburn, 8 Wall. 318.

certified to be due from him to the plaintiff, he, by his counsel, undertaking to account for the same in the accounts hereinafter directed ; ” 1. Account of what is due to the plaintiff for principal and interest, in respect of his equitable mortgage in the pleadings mentioned, and for * his costs of suit to be taxed ; 2. An account of the * 2217 balances of the rents and profits of the estates so to be paid to the plaintiff as hereinbefore directed ; and let the same be deducted from what shall appear to be due from the defendant for such principal, interest, and costs as aforesaid ; and let, upon the defendant paying to the plaintiff what shall be certified to be due to him for such principal and interest as aforesaid, together with the said costs when taxed, after such deductions as aforesaid, within — months after, &c., at such place, &c., the plaintiff deliver all deeds, &c. ; but in default of the defendant paying, &c., let the defendant convey, &c. 1 Seton Dec. (Eng. ed. 1862) 444. For decree in case of infants, see Price v. Carver, 3 M. & C. 164 ; and for decree for conveyance of estates mortgaged by deposit, and foreclosure of estates legally mortgaged, with receiver of the former, Holmes v. Turner, 7 Hare, 369, n.

(d.) *Sale ; mortgage by deposit.*

“ Declare, that the plaintiffs are entitled by virtue of the deposit of the title deeds, and the agreements relating to or accompanying the same in the pleadings mentioned, to an equitable lien or mortgage upon the premises therein mentioned, for securing to the plaintiffs the repayment of the principal sum of \$—, and the interest due thereon ; and decree the same accordingly ; ” Account of what is due to the plaintiffs for principal, interest, and costs of suit to be taxed ; “ And upon the defendant’s paying to the plaintiffs what shall be certified to be due, &c., within — months after, &c., at such place, &c. ; let the plaintiffs deliver up the said title deeds, &c. ; but in default, &c., let the said premises, or a sufficient part thereof, be sold with the approbation, &c., and let the money to arise by such sale be paid into the, &c., to the credit of this cause, and be applied in payment of what shall be certified to be due to the plaintiffs for principal, interest, and costs as aforesaid.” Adjourn, &c. 1 Seton Dec. (Eng. ed. 1862) 445.

18. LIENS.

(a.) *Lien on reversion ; conveyance.*

“ Declare that the plaintiff is entitled to a lien in the nature of an equitable mortgage on the defendant’s reversion or remainder, in fee-simple expectant on the death of W., of, &c., of and in the several messuages, &c., therein mentioned, for the sum of \$—, and interest thereon ; and let an account be taken of what is due to the plaintiff for principal and interest on the said sum of \$— ; and let, upon the defendant paying to the plaintiff what shall be certified to be due for * principal and interest in respect thereof, within — months after,

&c., at such, &c., the plaintiff deliver up all deeds, &c., or as he shall appoint, but in default, &c., declare that the plaintiff will be entitled to the said reversion of the said messuages, &c., expectant upon the death of the said W., free and clear of and from all right, title, interest, and equity of redemption of, in, and to the same; and to have a conveyance thereof accordingly; and in that case let the defendant execute to the plaintiff such conveyance, to be settled, &c., if the parties differ." No costs on either side. Liberty to apply. 1 Seton Dec. (Eng. ed. 1862) 450.

(b.) *Lien on costs in another suit declared.*

"Declare that the plaintiffs are entitled to a lien on the costs, and costs, charges, and expenses of the defendant H., in the suits of B. v. J. &c., and are to be at liberty to attend the taxation of such costs, and costs, charges, and expenses, or any part thereof, and from allowing any other person or persons other than the plaintiffs to receive the same." Decree for redemption and foreclosure. 1 Seton Dec. (Eng. ed. 1862) 450, 451. For declarations as to solicitor's lien on title deeds for costs, see Pelly v. Wathen, 7 Hare, 351.

(c.) *Decree declaring a lien or charge upon an estate for the increased value by improvements made by a bona fide purchaser, for a valuable consideration, without notice of any defects in the title.*

First interlocutory decree in the case of John Bright, in Equity, against John W. Boyd. — And now at this term the cause came on to be heard upon the bill, answer, pleadings, evidence and other proceedings in the cause, and was argued by counsel. On consideration whereof it is ordered, adjudged, and declared by the Court, that is to say, that it appears to the Court, that the plaintiff is the purchaser, for a valuable consideration, of a defective title, without notice of the defect therein, and that improvements have been made by the plaintiff, or his grantors, on the premises of the defendant, under a mistake of title, and that he is entitled to relief in Equity.

That it be referred to a Master, if the parties do not otherwise agree, to ascertain the character and value of said improvements, by whom made, and at what time they were made. Also, that the Master ascertain and report of the value of the rents and profits of the land, on which said improvements are made, and state an account thereof. Also, to ascertain and report the present value of the said land without the improvements, and how far the value of said land is increased by said improvements.

And that the Master is to ascertain the foregoing facts, as well * 2219 by *the examination of witnesses as by the examination of the parties, and by other suitable proofs, and to make report thereof to the Court. And that the Master be clothed with all proper powers for the purposes aforesaid, and that further orders and decrees in the premises be reserved until the coming in of the report.

Report of the Master. — The Master to whom it was referred to ascertain the character and value of the improvements on the lot in controversy, by whom made, and at what time they were made, and to ascertain and report upon the value of the rents and profits of the land, on which said improvements are made, and state an account thereof; also to ascertain and report the present value of the land without improvements; reports that, as far as he has been able to ascertain the improvements upon said lots were made by John E. Marshal. They consist of a double wooden tenement of two stories, which was built in the years 1834 and 1835, and completed in the early part of the summer of 1838; that the said improvements are worth nine hundred and seventy-five dollars, and that the land without the improvements would be worth at this time twenty-five dollars; and that the land, with the improvements, is now worth one thousand dollars, so that the value of the land is increased by the improvements nine hundred and seventy-five dollars, and that, in his opinion, there would have been no rents or profits from said land if no improvements had been made thereon.

H. W.

Fees, \$—.

Final decree. — And now, on coming in of the Master's report, it is ordered, that the same be accepted and allowed.

And it is further ordered, adjudged, and declared that the said improvements, to the value of nine hundred and seventy-five dollars, are a lien upon the whole of the premises described in the plaintiff's bill, and that one-quarter part of the said premises stand charged with one-quarter of the said improvements.

And it is further ordered, that unless one-quarter part of the said sum of nine hundred and seventy-five dollars is paid by the defendant to the plaintiff by the next term of said Court, one-quarter part of the whole of the said premises, with the improvements thereon, shall be sold, and the proceeds thereof, to an amount not exceeding one-quarter of nine hundred and seventy-five dollars, shall be paid over to the plaintiff.

And it is further ordered, that all further orders and decrees in the premises be reserved until further order of Court. Bright v. Boyd, 2 Story, 607.

* (d.) *Decree that subsequent assignees pay to former assignees of an insolvent debtor taxes on real estate held by the latter under the assignment, and assessed to same while acting as such assignees, and paid by them after they had ceased to be assignees, on appeal from decree of Commissioner of Insolvency disallowing their claim.* * 2220

J. H. L. v. J. M. H. et al.

And now, upon the pleadings and report of the Judge at Nisi Prius, and after argument by the counsel for the petitioners and for the defend-

ants, the full Court are of the opinion that the Commissioner of Insolvency erred in not allowing to the petitioners the said sum of \$160.44, the amount by them paid out for taxes assessed upon real estate vested in them such assignees for the years 1856 and 1857, as claimed by the petitioners in and by their second account.

It is therefore ordered and decreed that the decree of the Commissioner of Insolvency accepting and allowing said second account, be, and the same hereby is, reformed, so as to allow to the petitioners the said sum of \$160.44, and that said sum of \$160.44 so paid out for taxes be, and the same hereby is, allowed to the petitioners as claimed by them in said second account.¹

J. M. H., new assignee, to pay costs to the petitioners out of the funds in his hands as such assignee, and execution to be awarded accordingly therefor against J. M. H., with directions inserted therein for said costs to be paid out of said funds. *Loud v. Holden, 14 Gray, 154.*

E. A., Solicitor for Plaintiff.

19. DECREE FOR DELIVERING POSSESSION OF MORTGAGED PROPERTY TO MORTGAGEES.²

This cause having been heard upon the bill and answer, and it thereupon appearing to the Court here, that the said Norfolk County Railroad Company did duly make, execute, and deliver to the said R. G. S. and others the said deed of trust and of mortgage, and did also duly make, execute, issue, and deliver to divers persons their bonds for the payment of money and the interest accruing thereon, as in the said bill is particularly set forth; and it further appearing to the Court here, that the said Norfolk County Railroad Company have since failed and neglected, and still do fail and neglect, to pay to the respective holders the interest

which has accrued and become due upon said bonds according

* 2221 * to the tenor thereof, and to fulfil and comply with the stipulations contained in the same, and that by reason of such failure and neglect to pay said interest, and to fulfil and comply with such stipulations, the plaintiffs being the present trustees under said deed, are entitled as against said Norfolk County Railroad Company and its successors, to take, have, and hold possession of the whole property conveyed to the said R. G. S. and others in and by the said deed of trust and of mortgage, and to manage and dispose of the same according to law, for the purposes in the said deed specified.

It is, therefore, thereupon ordered and decreed by the Court here, that possession of all the said property, rights, and estate conveyed in and by the said deed to the said R. G. S. and others, be delivered to the plaintiffs by the said Norfolk County Railroad Company and by their officers, agents, servants, and successors, and by any and all persons and corporations, their officers, servants, and agents, who have derived or acquired any right, title, or claim thereto from or under

¹ See form of decree on similar principle, in *Murray v. De Rottenham*, 6 John. Ch. 52.

² *Shaw v. Norfolk Co. R. R. Co.* 5 Gray, 184, 185.

said Norfolk County Railroad Company, or in consequence of any act done or vote passed by them since the commencement of the proceedings against them upon the bill aforesaid; to be held, managed, and disposed of by the plaintiffs according to law, under the provisions of the deed aforesaid, until the further order of this Court relative thereto.

And it is in like manner further ordered and decreed, that the said Norfolk County Railroad Company, their successors and assigns aforesaid, and their respective officers, agents, and servants, be and hereby are severally required and commanded, forthwith, upon demand of the plaintiffs, to deliver to them possession of the said property, rights, and estate, and of any and every part thereof, and are forbidden and enjoined from thereafterwards intruding or interfering with the plaintiffs in their exclusive use, occupation, and enjoyment of any part of said property, rights or estate, without, or until, the further order of this Court relative thereto.

20. MORTGAGES.—REDEMPTION.

(a.) *Decree for redemption and account against mortgagee in possession.* [English Form.]

Among other things.] The Court doth think fit and so order and decree, that it be referred to Mr. A. B., one of the Masters, &c., to take an account of what is due to the defendant J. R., for principal and interest on his said mortgage, and to tax him his costs of this suit. And the said Master is also to take an account of the rents and profits * of the said mortgaged premises come to the hands of * 2222 the said defendant J. R., or of any other person or persons by his order or for his use, or which he without wilful default might have received. And what shall be coming on the said account of rents and profits is to be deducted out of what shall be found due to the said defendant J. R. for principal, interest, and costs. And for the better taking the said account, all parties are to produce, &c., as the said Master shall direct, who in taking the said account is to make unto the parties all just allowances. And what upon the balance of the said account shall be certified due to the said defendant J. R. for his principal, interest, and costs, it is ordered and decreed that the said plaintiff A. O. do pay the same unto the said defendant J. R. within —— months¹ after the said Master shall have made his report, at such time and place as the said Master shall appoint, and that thereupon the said defendant do resurrender [reconvey, reassign] the said mortgaged premises unto the

¹ The decree upon a bill to redeem, should fix the time within which the redemption is to take place: and should direct that the plaintiff's bill be dismissed with costs, if the money be not paid within the time prescribed. *Walker v. Harris*, 7 Paige, 167; *Shannon v. Speers*, 2 A. K. Marsh. 312; *Dennett v. Codman*, 158

Mass. 371; *Chicago & Calumet R. M. Co. v. Scully*, 141 Ill. 408; 43 Ill. App. 622. The time to be fixed is within the discretion of the Court, and, being fixed, will not be enlarged. *Perine v. Dunn*, 4 John. Ch. 140; *Novosielski v. Wakefield*, 17 Ves. 417; see *Beevor v. Lawson*, L. R. 4 Eq. 537, 549.

said plaintiff A. O., or unto such person or persons as he shall direct, free and clear of all incumbrances done by him or any person claiming by, from, or under him. But in default of the said plaintiff's paying unto the said defendant J. R. what shall be so certified due to him for principal, interest, and costs, as aforesaid, after such deductions made thereout as aforesaid, at such time and place as aforesaid, it is ordered that the said plaintiff's bill as against the said defendant J. R. do from thenceforth stand dismissed out of this Court, with costs, to be taxed by the said Master.

(b.) *Another form: by agreement.*

Among other things.] And in pursuance of the agreement of the parties, which makes part of the report of said cause, this Court doth order that the cause be referred to W. J. H., one of the Masters in Chancery of said county of S., to take an account of all sums due the said C., or his assignees, the said J. and M., as mortgagees of said bond or contract of the Commonwealth for the conveyance of said half township of land, with interest thereon, and of all sums received, or which with the use of common care or prudence might have been received, by said defendants, C., or J. and M., on account of said bond or contract, or from the use or occupation of said land by said defendants, or persons acting under their license or authority, stating in separate accounts the amounts received, or which with due care ought to have been received, by said C., and by said J. and M., respectively, with interest thereon.²

* (c.) *Occupation rents.¹*

And it being alleged, that the defendant has been in the actual possession and enjoyment of the said mortgaged premises since the — day of —, it is ordered that the Master do inquire whether the defendant has been so in the possession and enjoyment, as alleged, of the whole of the premises or any part thereof; and if he so find, it is ordered that he do set an annual value by way of occupation rent thereon during the time of the occupation thereof, and charge the defendant with said value in the said account of rents and profits.

(d.) *Repairs and lasting improvements.*

And it is ordered that the Master do take an account of all sums of money laid out or expended by the defendant in necessary repairs and lasting improvements on the premises comprised in the said mortgage, and let interest be computed on the sums which shall appear to have been so laid out in lasting improvements after the same rate of interest as the said mortgage carries, and let what shall appear to be due on the last-mentioned account be added to what shall appear to be due for principal, interest, and costs on said mortgage.³

² See *Pingree v. Coffin*, 12 Gray, 312.

¹ To charge a mortgagee in possession with occupation rent, the mortgagor should allege, and show that he actually occupied. *Trulock v. Robey*, 15 Sim. 265, 276, n.; S. C., 2 Ph. 395.

³ See the specific directions given to the Master in a case where the inquiry was whether the rents would be sufficient to pay for the necessary expenses of preserving the estate, in *Sparhawk v. Wills*, 5 Gray, 430.

(e.) *Rests.*

And let what shall appear to be due on the said account of rents and profits be applied, first in discharging the interest, and then in sinking the principal money secured by the said mortgage, and if the same shall break in upon the principal, then rests are to be made from time to time, and interest to be computed only on the residue thereof.

(f.) *Deterioration.*

And it is ordered that the Master do inquire whether the mortgaged premises have been deteriorated since the defendant hath been in possession thereof, by the wilful neglect of the defendant in not repairing the same, and to what extent.*

(g.) *Strip and waste.*

And it is further ordered that the said Master do take an account of all wood and timber cut down and carried off by said C. L. from said mortgaged premises, and of all other strip and waste by said C. L. committed on the said mortgaged premises.

*(h.) *Inquiry as to brickmaking on the premises.* * 2224

That the Master do inquire what parts of the said mortgaged premises, and from and during what time, have since the said A., deceased, took possession of the said premises, been made use of for the purpose of making bricks and tiles, or for getting earth or clay from which bricks and tiles have been made; and let a fair and proper occupation rent be set for such parts of the said mortgaged premises, having regard to the rent for which such parts would from time to time have let to brickmakers for the purpose of making bricks and tiles therefrom.

(i.) *Account of insurance premiums.*

That the Master do take an account, &c., including the sums the defendant has paid for premiums on the policy of insurance in the pleadings mentioned, with interest thereon at the same rate as the mortgage carries.

(j.) *Common form of decree for reference on a bill to redeem against mortgagee in possession.*

The Court doth order and decree that it be referred to G. F. C., Esq., one of the Masters of this Court, to take an account of what is due to the defendant for principal and interest on the mortgage in the pleadings mentioned, and that the said Master do also take an account of the rents and profits of the said mortgaged premises received by the defendant, or by any other person or persons by his order, or for his use, since the — day of —, or which without his wilful default

* Inquiry as to loss by mortgagee in possession, having pulled down cottages. Sandon v. Hooper, 6 Beav. 250.

might have been received thereout. And what shall be coming on the said account of rents and profits, to be deducted out of what shall be found due to the defendant for principal and interest. And in case the said Master shall find that the said defendant has been in possession and held the said premises as owner thereof, then the said Master is to set a rent thereon, and take the account accordingly. And in taking the said accounts, he is to make to the parties all just allowances, and particularly for all necessary repairs and lasting improvements which have been made by the defendant on the said mortgaged premises since the ——; with the usual directions, &c.

(k.) *Another form for the same.*

That it be referred to, &c., to take and state an account of the principal and interest remaining due of the debts secured to be paid by the two mortgages first above mentioned, and of the rents and profits of the said mortgaged premises which the said A. B., as purchaser thereof, has received or might with ordinary care and diligence have received, since the time of the said purchase, on the —— day of ——, to the * 2225 time at * which the Master shall make his report, and also the value of the beneficial and permanent improvements now existing, if any, which the said A. B. has caused to be put upon the said mortgaged premises, and also the injury, waste, or deterioration of the said mortgaged premises, or in the value thereof, if any, by the said A. B., or any person or persons under him during the time aforesaid.

(l.) *Another form for the same.*

Circuit Court of the United States,
Massachusetts District.

This cause came on to be heard at this term, counsel being present; and thereupon, upon consideration thereof,

It is ordered, that it be referred to C. B. G., Master, to take an account and ascertain and report the amount due on the mortgage described in the plaintiff's bill. And the said Master is to make his report touching the matter hereby referred to him with all convenient speed.

By the Court,

Attest, H. W. F., Clerk.

(m.) *Dismissal of bill for redemption, on plaintiff's failure to pay the amount found due on the mortgage.*

Upon motion, &c., by counsel for the defendant, who alleged that by the decree, dated, &c., it was referred to Mr. A. B., &c., to take an account, &c. That in pursuance of the said decree, the said Master made his report, dated, &c., and thereby certified that there would be due to the defendant for principal and interest on his said mortgage, and for his costs, &c., on the —— day of ——, the sum of \$—, which the said plaintiff was thereby appointed to pay to the defendant on, &c., at, &c., between, &c.; that it appears by, &c., that he did attend,

&c. [naming the place and time appointed], in order to receive from the plaintiff the said sum of \$——, but the plaintiff did not, nor did any person on his behalf, attend to pay the said sum, and that the said sum hath not, nor hath any part thereof, been since paid to the defendant, but that the whole thereof still remains due and owing; and upon reading the said decree, the said Master's report, &c., this Court doth order that the plaintiff's bill do stand dismissed out of this Court with costs, to be taxed, &c., and paid to, &c., pursuant to said decree.¹

* (n.) *Decree for surrender of mortgaged premises on payment of amount found due on the mortgage; in default of payment, bill dismissed, and redemption barred.* * 2226

Circuit Court of the United States, } May T., 1855.
Massachusetts District. }

W. H. v. W. Bank.

This cause was thence continued to the present term of this Court, when same came on for a hearing upon exceptions taken to said Master's report, and on a Bill of Revivor, and thereupon and in consideration thereof, it is ordered, adjudged, and decreed, that if said T. B. H., S. B. H., J. C. S., and E. S., named in said Bill of Revivor, shall, within sixty days from the fifteenth day of May, A. D. 1855, pay or cause to be paid to said defendant the sum of fifteen thousand six hundred and seventy-five dollars and ninety-nine cents, with interest thereon, from this fifteenth day of May, A. D. 1855, to the day of payment, together with the defendant's costs of this suit taxed at —,

Thereupon said defendants shall surrender said mortgaged premises unto the said T. B. H., S. B. H., J. C. S., and E. S., and to their heirs and assigns for ever, free of and discharged from said mortgage and all incumbrances created or made by them. But in default of the payment of said sums of fifteen thousand six hundred and seventy-five dollars and ninety-nine cents with interest thereon, and of three hundred and sixty and $\frac{4}{5}$ dollars costs of suit, on or before the said time of payment as aforesaid, it is ordered and decreed, that said bill shall stand dismissed out of this Court, and that no person claiming from or under said original plaintiff shall have any further claim or right to redeem said premises from the force and effect of said mortgage, set forth in the plaintiff's bill.

(o.) *Decree, — among other things, — declaring an instrument in writing a mortgage, subject to redemption.*

"And this Court doth further declare that the instrument in writing, bearing date the thirty-first of August, eighteen hundred and forty-four,

¹ See *Stuart v. Worrall*, 1 Bro. C. C. 581. Where a party fails to redeem within the time allowed, it is usual to dismiss the bill, which amounts to a bar of the equity of redemption. *Perine v. Dunn*, 4 John. Ch. 140; *Cholmley v. Oxford*, 2 Atk. 267; *Bishop of Winchester v. Paine*, 11 Ves. 199; *Ex parte Paine*, 3 De G. J. & S. 458.

signed by said C., and delivered to said S., was a mortgage, under and by virtue of which said C. and his assignees with notice held the bond or contract of the Commonwealth as mortgagees, and subject to the right of said Smith or his assignee to redeem the same in Equity."¹

* 2227 * (p.) *Decree for redemption where an absolute deed was shown to be a mortgage by parol evidence.*¹

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed by the Court, that the said conveyance, by way of release and assignment of the premises in the pleadings mentioned, to the said Martin Luther (the defendant) be, and is hereby declared to be, not an absolute conveyance and assignment, but a mere mortgage of the premises to the said defendant, and as such the plaintiffs are entitled to redeem the same upon payment of all moneys and just claims, which the said defendant hath secured to him by and in the same premises, in virtue of and under the same conveyance and assignment; and it is hereby decreed that the plaintiffs be allowed to redeem the same accordingly.

And it is further ordered, adjudged, and decreed that it be referred to a Master for this purpose, to take an account in the premises, making all due allowances, and charging the defendant with all receipts and profits, with the usual powers of Masters in such cases to examine the parties, and to take other evidence in the premises, and to call for all proper vouchers and papers, and to make report of his doings, &c.

And all further orders and decrees are reserved until the coming in of the Master's report. *Taylor v. Luther*, 2 Sumner, 237, 238.

(q.) *Decree declaring an absolute deed to be a mortgage, given to secure a debt; absolute sale by the mortgagee, without notice, destroying the equity of redemption, a constructive fraud; defendant (mortgagee) to pay to the mortgagor the value of the land and of the rents and profits, after deducting the principal and interest of the debt for which the deed was made.*

United States Circuit Court, } Oct. T., 1855.
Massachusetts District. }

This case having been heard on the bill of complaint filed therein, and upon the answer of the defendant thereto, and upon the proofs exhibited by the respective parties, and the parties having been fully heard by their counsel, this Court doth declare the conveyance of N. W. to said defendant, bearing date the twentieth day of November, in the year one thousand eight hundred and twenty-eight, to have been a mortgage to

¹ See *Pingree v. Coffin*, 12 Gray, 312.

Parker, 22 N. J. Eq. 453; *Phillips v. Hulsizer*,

¹ See *Henry v. Clark*, 7 John. Ch. 40; 20 id. 308.

Wyman v. Babcock, 2 Curtis, 386; *Sweet v.*

secure the debts the amount whereof is named in said deed as the consideration of the same, and that at the times of the sales of the lands in said conveyance set forth by the defendant, the assignor of the plaintiff had the right to redeem the same.

* And doth declare that the absolute sales and conveyances by defendant of said lands to *bona fide* purchasers for valuable consideration without notice, was a constructive fraud upon the rights of the assignor of plaintiff, and that therefore he became entitled as against the defendant personally to an account of the value of the lands and of the rents and profits thereof; and after deducting the amount of principal and interest due said defendant, to the payment of the balance.

And doth declare that the plaintiff as assignee has succeeded to those rights.

And said cause having been referred to a Master to take the necessary accounts in pursuance of the foregoing declaration of this Court, and said Master having made his report in the premises, and the same being duly considered, the respective parties heard therein, this Court doth order and decree that there be paid by said defendant to said plaintiff the sum of twelve thousand and sixty-seven dollars and nine cents, together with costs. *Wyman v. Babcock*, 2 Curtis C. C. 386.

(r.) *Outlines of a decree, declaring plaintiffs entitled to redeem against purchaser with notice of plaintiffs' right, and a reference in regard to the amount due on the mortgages, the rents and profits, the improvements and waste.*

The Court doth declare, that the plaintiffs, who are judgment and mortgage creditors, are entitled to redeem the seventy acres covered by the two mortgages, upon paying the amount due thereon; and that the claim of G. D., to set up a mortgage debt upon other lands, and a book debt against M. Mc., as a condition of such redemption, was unwarranted and unlawful, inasmuch as the case warrants the presumption and conclusion of law, that these debts were paid; and if not paid, the plaintiffs who were such creditors, and who had no previous notice of them, were not bound to pay them. And the Court doth further declare, that the sale by G. D. was unlawful and fraudulent, because the notice of sale contained a false assertion, that these seventy acres were covered by a third mortgage, which was upon other lands only, and because no place of sale was specified in the notice, and because the power to sell under the third mortgage upon other lands was, in itself, null and void, and because the sale was made, after a tender was made of the sum due upon the two mortgages on the seventy acres, with the costs. And the Court doth further declare that W. G. D., the defendant, was a purchaser chargeable with notice of the right of the plaintiffs, and of the tender; and even without notice, he would have been a purchaser, under the circumstances of the sale, subject to the right of redemption of the plaintiffs, and that J. Mc., the original plaintiff, died, seised in fee of

the said mortgaged premises, subject to the incumbrances
 * 2229 chargeable thereon; and that *the other plaintiffs are his lawful heirs, entitled to the same rights. And the Court doth order and decree that it be referred to a Master, to state and report the amount due on the two mortgages, and the rents and profits which have, or might have been received by the defendant W. G. D., and the value of the beneficial and permanent improvements now existing, and made by him thereon, and the injury, waste, and deterioration, which he may have committed, or suffered to be done, &c.¹ *Burnet v. Denniston*, 5 John. Ch. 43, 44.

(s.) *Another form of declaration that parties are not bona fide purchasers without notice.*

Among other things.] And this Court . . . doth further declare that said J. & M. are not *bona fide* purchasers, without notice, of the lands described in said bill, but did receive a conveyance thereof and do now hold the same with notice of and subject to the plaintiff's rights therein.²

(t.) *Redemption after tender; payment into Court; costs; costs, charges, and expenses.*

"Let the plaintiffs, H. &c., be at liberty, on or before, &c., to pay the sum of \$2000, unto, &c.; and let, upon such payment being made, the defendants P. &c., deliver up all deeds, &c.; and let an account be taken of what on the eighteenth day of March, 1853 [*date of tender*], was due to the defendants for principal and interest in respect of their mortgage security, &c., and for such (if any) costs, charges, and expenses as are secured thereby, or as they are entitled to, under their said mortgage security, such costs, charges, and expenses to be taxed, &c.; and if it shall appear, on taking the said account, that the amount due to the defendants for such principal, interest, and costs, charges, and expenses, on the said eighteenth day of March, 1853, did not exceed the sum of \$1900 [*the sum tendered*]," — Tax the plaintiffs' costs of suit, and amount to be deducted, and the balance remaining due to the defendants, for principal, interest, and costs, charges, and expenses, to be paid out of the said \$2000, when paid in, and thereupon defendants to reconvey, &c., and the residue of the \$2000, to be repaid to the plaintiffs; but if the plaintiffs shall not pay in the \$2000, upon the plaintiffs paying to the defendants the amount found due, within — months, &c., defendants to reconvey and deliver all deeds, &c., but, in default, the plaintiffs' bill to be dismissed, with costs; — "But in case it shall appear on taking such accounts that the amount due to the

¹ To authorize a recovery for waste in such a case it must be charged in the bill. *Gordon v. Hobart*, 2 Story, 243, 260, 261.

² *Pingree v. Coffin*, 12 Gray, 311.

defendants on the eighteenth day of March, 1853, did exceed the said sum * of \$1900, let subsequent interest be computed from * 2230 the said eighteenth day of March, 1853, and added to what shall appear to be due as aforesaid." And tax the defendants' costs of suit, and amount to be added; and what shall be certified to be due to be paid out of the \$2000, and the residue to the plaintiffs; or if the \$2000 is insufficient, the whole to be paid to the defendants in part-payment, and the balance to be paid by the plaintiffs; and thereupon defendants to reconvey, &c.; And in case the plaintiffs shall not pay in the \$2000, usual directions for redemption, or bill to be dismissed with costs. Harmer v. Priestly, 16 Beav. 569; 1 Seton Dec. (Eng. ed. 1862) 462.

(a.) *Chattels. Redemption of goods pledged; overpayment; assignee.*

It is ordered and decreed that it be referred to A. B., Esquire, Master, &c., to take an account of what remained due on the, &c., the date of the last note exhibited in this cause, for principal and interest of the money advanced and lent by the defendant W. to the said C., the bankrupt, on the pledge of the jewels, plate, and effects mentioned in the original note from the defendant to the said C., dated, &c., and to compute the interest on so much of the principal as then remained due. And it is further ordered, that the said Master do likewise take an account of the said jewels, plate, and effects, specified in the last-mentioned note, and see which of them remain in specie in the custody or power of the defendant, and what part thereof hath been sold or disposed of by the defendant. And as to such part thereof as hath been so sold or disposed of, it is further ordered, that the said Master do take an account of the real value thereof; and that the value of such part thereof as hath been so sold or disposed of by the defendant be applied in the first place towards paying the interest, and then towards sinking the principal, of what shall be so found to have been due to the defendant for the money lent or advanced by him as aforesaid. And if upon the balance of the said account, anything shall be found to remain due to the defendant for principal or interest, then on payment thereof by the plaintiff to the said defendant at such time and place as the said Master shall appoint, it is further ordered that the defendant do deliver to the plaintiff such part of the said jewels, plate, and effects as shall be found to remain in specie. But in default of such payment by the plaintiff to the defendant as aforesaid, it is further ordered that the said plaintiff's bill do from thenceforth stand dismissed out of this Court with costs to be taxed by the said Master. And in case it shall appear on the said account that the defendant is overpaid his said principal and interest, then it is further ordered that the said defendant do pay to the plaintiff so much as shall remain due to the plaintiff on the said account, and also to deliver to the plaintiff such part of the said jewels, plate, and effects * as shall remain in specie, to be applied as part of the * 2231 personal estate of the bankrupt, for the benefit of the creditors seeking relief under, &c. And the Court doth reserve the consideration of interest of any money that may be found due from the defendant to

the plaintiff, in case there shall be any such, and also the consideration of costs, till after the said Master shall have made his report. Liberty to apply.¹

(v.) Report of Master on a bill for redemption.

In Chancery [or, Equity].

R. R. B. et al.

v.

J. McV. et als.

Report.

To the Honorable Judges of the Supreme Judicial Court.

In pursuance of a decretal order of this honorable Court, made in the above cause, and dated the — day of —, A. D. 18—, I, the subscriber, one of the Masters of this Court, having been attended at several times by counsel for the plaintiffs and for the defendants, and having examined the evidence taken in chief in this cause, and taken the testimony of several witnesses produced before me, upon the matters directed to be inquired into by such order, and considered the same, do report, —

That I have stated the account of the amounts due upon the two several bonds and mortgages mentioned in the said decree, and of the rents and profits of the mortgaged premises since the — day of —, 18—, received by the defendant W. G. D., or which with ordinary care and diligence might have been received by him, the particulars and items of which accounts appear in Schedule A hereto annexed and making part of this report; that, in computing the amount due upon said bonds and mortgages, I have stopped the interest upon the — day of —, 18—, the day of the tender made by some of the plaintiffs to W. G. D., of the amount due upon the said mortgages; conceiving that such tender was strictly made, and that the defendant had no reasonable cause for refusing to admit the redemption sought.

And I further report, that the plaintiffs have claimed for rent of the premises, since the — day of —, 18—, the annual sum of \$75, that the amount actually received has been the sum of \$70 annually, from

A. M. tenant in possession since that period; that it appears * 2232 from the *testimony of B. McV. that, in the month of —,

18—, he gave up the premises, but not being able to procure another place, offered to said W. G. D. \$75 a year rent to allow him to remain; that the premises were then let, or contracted to be let to A. M., and that said D. stated he would try to let him, the said McV., have them at the sum offered, and, afterwards, that he was unable to do it on

¹ Bill to redeem goods pledged. See Kemp v. Westbrooke, 1 Ves. Sr. 278; Slade v. Rigg, 3 Hare, 35. To recover surplus, overpaid. Harrison v. Hart, Com. Rep. 393. Upon payment or tender of amount for which goods are pledged, the property is at once reduced to the pledgor and they may be recovered by action.

² Spence, 771. If no time be limited for re-

demption, pledgor may redeem at any time during his life. Kemp v. Westbrooke, 1 Ves. Sr. 278. Where the pledgee had sub-mortgaged by deposit, the original pledgor was entitled to redeem the goods, on paying the amount due on the original pledge. Spalding v. Ruding, 6 Beav. 376, 380.

account of his bargain with A. M.; that the first lease to said A. M. was for the period of three years; and that it does not appear that the said McV., or any other person, at any subsequent time, renewed the offer of \$75 or any other sum beyond the said \$70 rent actually received, nor that any application was ever made to the said McV. or to any other person by the said W. G. D. to take the premises at the said rent of \$75 or any other advance; that, from a consideration of the testimony upon that point, I am of opinion the sum of \$70 was a fair and adequate rent for the premises at that period, and has so remained to the present time; and that, under these circumstances, I have disallowed the claim of the said plaintiffs, not conceiving this a case in which a mortgagee in possession should be charged beyond the amount actually received on the ground of wilful default or defect of diligence.¹

And as to such part of the decree as directs an account to be taken of the injury, waste, or deterioration of the mortgaged premises or in the value thereof, by W. G. D., or by those under him, I report, —

That I have taken the rule of Court to be that a mortgagee in possession is, in Equity, chargeable only for waste, technically so called, or wilful neglect, producing an injury and deterioration of the premises, but is not liable for a diminution of value which may be accounted for by the lapse of time merely.² And I find that the premises were, in the month of —, 18—, at the commencement of the possession by said W. G. D., in about the same situation, as to fences and buildings, as at present, that a considerable quantity of timber, young and old, was at that period upon the premises; that the whole of such timber has been cut down, and that the place is now entirely destitute of wood. But I find, from the testimony of several witnesses, that the quantity of wood upon the place would not have been sufficient to supply the ordinary consumption for firewood and repairs; that the young timber could not have been preserved if firewood was taken from the premises, and that a considerable quantity of wood has been taken from other pieces of land belonging to said W. G. D. for the consumption of the place, by his permission. Under these circumstances, I have found no reason to charge the said defendant with any sum of money on the ground of such destruction of the wood, nor, in my opinion, does the testimony supply any ground to charge the defendants by reason of any improper cultivation, or undue exhaustion of the farm.

* And as to such part of the decree as directs the Master to * 2233 take an account of the value of the beneficial and permanent improvements now existing, if any, which the said W. G. D. hath caused to be made upon the said mortgaged premises, I report, —

That I have taken the rules of the Court to be, that additional permanent improvements upon the premises, made by a mortgagee in possession, shall be paid for only by their value at the time of the redelivery of possession;¹ but that he shall be allowed the actual

¹ *Ante*, p. 1238-1240.

² *Ante*, p. 1240.

¹ *Ante*, p. 1243.

costs of necessary repairs, whatever may be the existing value of the subject upon which they were made; ² and that the allowance of the same is to be determined by their necessity for the preservation of the premises in the same condition, or the producing of the rent charged to the mortgagee;

And, further, that I have not considered the omission of the decree to provide for an allowance for necessary repairs as precluding me from making it, according to their cost. And having examined the testimony as to the expenditures of the said W. G. D., and work performed by him upon the premises, with a view to these rules, I find that at an early period of the possession of B. McV. as tenant of said D., and as it appears, during the first year, the said D. employed said McV. to build about fifty rods of stone fence upon the premises, and allowed him fifty cents a rod for the same, and that the amount was credited upon the rent payable by said McV., and such price allowed appears to have been reasonable; that at that time the fences were in a decayed condition, and that such piece of stone fence is at the present time considerably sunken and out of repair, and the premises, as to fences, are in about the same repair as when McV. took possession, — that consequently the allowance, if any, which could be made for the same, by its existing value as a permanent improvement, would be very trifling, — but that I have considered the same as a necessary expense for the repair of the premises, and as a cause of the increase of rent afterwards charged and actually received, and have therefore allowed the same.

And I further find and report that, during the first three years of the possession of A. M., as tenant of said D., after J. McV., and as it appears during the second year of such possession, the said D. built a small piece of stone wall upon the premises, stated by A. M. to have been between ten and twenty rods, and the cost of it was about the sum of five shillings a rod; that the same is now out of repair and in a decayed condition: but that I have allowed its actual cost, conceiving it a necessary repair;

And, further, that it appears that the said A. M. has advanced the money for the payment of taxes upon the premises, and receipts * 2234 were * taken to himself; that he has stated in his testimony that he is to be allowed for the same by W. G. D., the leases to him not containing any covenant for the payment of the same by himself, and that there is an unsettled account between himself and said D.; and that I have allowed the amount of such taxes to said D., so far as any proof of payment has been produced to me.

And I further report that I have considered the defendant W. G. D., previous to the — day of —, 18—, as a creditor, by the bonds and mortgages held by him, and by his disbursements on the premises, receiving partial payments in liquidation of his claim by means of the rents and profits; that I have not allowed interest upon the rents up to that time, nor upon the disbursements of the defendant W. G.

² Ante, p. 1242.

D.; and interest upon the bonds and mortgages being stopped previous to the commencement of the reception of the rents, such partial payments have gone in extinction of a dead sum; and therefore I have not found it necessary to make any rest in the account before such last-mentioned date.

And I find that on the said —— day of ——, 18—, the total of the rents received had fully discharged the total amount in any manner due to the said W. G. D., according to the allowances made by me, and that there was a balance then in his hands of \$——; that from that time I have considered the said defendant, W. G. D., as becoming a naked trustee, retaining moneys in his hands, which the plaintiffs were entitled to receive, and therefore chargeable with interest on his annual balances. And I have stated the residue of the accounts with annual rests, and in Schedule B to this report annexed have stated an account of interest upon the annual balances, the total amount of which balances is the sum of \$——, and of interest \$——, making together the sum of \$——, which sum I report chargeable to the defendant W. G. D.

All of which I respectfully submit.

(w.) Objections to draft of Master's report.

In Chancery [or, Equity].

R. R. B. et al. }
v.
I. McV. et als. }

Objections taken by the defendants to the draft of the report in this cause, prepared by M. H., Esq., the Master to whom this cause stands referred.

1st Objection. For that, in the computation of the interest due upon the bonds and mortgages mentioned in the report, the Master has stopped the interest on the —— day of ——, 18—, which ought to have been allowed to this time according to the decree, and at the * same time the Master has charged the defendant W. G. D. * 2235. with the whole rents and profits of the premises in question down to the time of making his report.

2d Objection. For that an allowance ought to have been made to the defendant W. G. D. for the value of the firewood furnished by him to the tenants in possession, or a deduction on that account ought to have been made from the rents with which he is charged by the said report.

3d Objection. For that allowance ought to have been made for a greater quantity of stone fence built on the premises, and for rails brought thereon from other premises or procured by the defendant W. G. D. according to the evidence before the Master.

4th Objection. For that the defendant W. G. D. is charged by the report with interest on the annual balances of the moneys received, or which are charged to him for what he might have received for the said

rents, when in fact such rents have not been annually received, and if so calculated, compound interest will in effect be charged against him, when at the same time no interest whatever is allowed on the debts or demands due on the said bonds and mortgages after the — day of —, 18—, and also for that no interest is allowed on the sums credited to the said W. G. D. for the additional building, and the stone wall, and other fences, and improvements made or caused to be made by him on the premises.

J. R., *Solicitor.*

These objections were turned into exceptions, and overruled.

21. PARTNERSHIP.

Enforcing or setting aside agreement.

(a.) *Decree enforcing partnership agreement with variations.*

The Court doth "declare, that the agreement for a copartnership in the pleadings of this cause mentioned, dated, &c., is a binding agreement between the parties thereto, and ought to be specifically performed and carried into execution; and decree the same accordingly; and it is ordered that the Master do inquire whether any, and what, variations have been made in the said agreement, by and with the assent of the several parties thereto, since the date thereof; And it is further ordered that a proper deed of copartnership between the said parties, in pursuance of the said agreement, be settled by the Master in case the parties differ; And in settling such deed, the Master is to have regard to any variations which may appear to have been

* 2236 made in * the said agreement on the result of the inquiry herein-

before directed; And it is further ordered that such deed of copartnership, when agreed upon between the said parties, or when so settled, be executed by the several parties thereto." Directions as to costs. Injunction continued. *England v. Curling*, 8 Beav. 140; 1 Seton Dcc. (Eng. ed. 1862) 540.

(b.) *Setting aside partnership induced by misrepresentation; consequent relief.*

This Court doth "declare, that the partnership entered into by deed, dated, &c., set forth in the plaintiff's bill in the first-mentioned cause, is void and invalid as between the parties thereto, and that the said deed ought to be set aside; and doth order and decree the same accordingly; And it is further ordered that the said partnership deed be cancelled; And the Court doth further declare, that the defendant B., and the estate of W., deceased, in the pleadings, &c., mentioned, are bound to pay to the plaintiff the sum of \$—, paid by him as a consideration for a share in the said partnership business, with interest thereon, at the rate of — per cent per annum from the — day of —, the date of the said articles of partnership, down to the time

of the repayment thereof; and the Court doth further declare, that the defendant B., and the estate of the said W., deceased, are bound to indemnify the plaintiff against the outstanding debts, sums of money, and liabilities which the plaintiff has, or may become subject and liable to pay, for, or on account, or in respect of the dealings and transactions of the said alleged partnership, or relating thereto. And the Court doth order and decree that it be referred to A. B., Esq., one of the Masters, &c., to take the following accounts; that is to say: 1. An account of such outstanding debts, sums of money, and liabilities; 2. An account of what is due to the plaintiff in respect of the said sum of \$— and interest; 3. An account of all sums of money which the plaintiff has already paid for or in respect of the debts, liabilities, dealings, and transactions of the said partnership, with interest thereon, at the rate of — per cent per annum, from the respective times the same were advanced or paid by the plaintiff; and in taking such account the plaintiff is to give credit for all moneys drawn by him on account of the profits of the said partnership business, with interest thereon, at the rate of — per cent per annum, from the respective times the same were drawn out; and the defendants J. W., &c., the executors of the said W., deceased, not admitting assets of the said W. sufficient to answer and satisfy what may be due to the plaintiff on taking the accounts hereinbefore directed, it is ordered that the plaintiff be at liberty to go in under the decree made in the cause of G. v. W., dated, &c., to prove for what shall be found to be due to him on taking the said accounts." Receiver continued; * and * 2237 to pay balance and pass accounts as directed by former order; defendant B. to pay plaintiff's costs of suit. Adjourn, &c. Rawlins v. Wickham, 1 Seton Dec. (Eng. ed. 1862) 541; 3 D. & J. 304; 7 W. R. 145.

(c.) *Partnership held still existing ; sale as a going concern.*

"This Court being of opinion that the memorandum of the — day of — in the bill mentioned, and the subsequent dealings of the parties, did not constitute an agreement on the part of the plaintiff for the sale of the plaintiff's share and interest in the L. concern in the pleadings mentioned." Decree for usual partnership accounts, and the said L. works to be sold as a going concern, with the approbation of the Master, &c. 1 Seton Dec. (Eng. ed. 1862) 541.

(d.) *Inquiry as to existence of partnership.¹*

It is ordered that the Master do inquire whether or not there was any, and what, partnership existing between G., deceased, in the pleadings named, and the defendant, and if so, when the same commenced, and whether the same ever, and when, determined, and under what circumstances. Adjourn, &c. 1 Seton Dec. 541.

¹ For a form of decree declaring the existence of a partnership and the rights of a joint creditor against the partnership effects, when one partner has absconded and the other not, — also directing an account, — see Robbins v. Cooper, 6 John. Ch. 186, 192, 193.

(e.) *Account; sale; dissolution.²**Decree for account of dealings and transactions.*

The Court doth order and decree that it be referred, &c., to take an account of all partnership dealings and transactions between the plaintiff and the defendant (from the — day of —); and that what, upon taking the said accounts, shall appear to be due from either of the said parties to the other of them, be (within one month from the date of the Master's report) paid by the party from whom, to the party to whom, the same shall be certified to be due [or, adjourn further consideration, &c.]. Liberty to apply. 2 Lindley Partn. (Eng. ed. 1860) 828; see also *id.* for the method of taking an account under such decree. [Hart v. Clarke, 6 De G. M. & G. 254.]

(f.) *House, &c., where business was carried on declared partnership assets; sale and accounts; Receiver.*

This Court doth declare, that the leasehold house, &c., at, &c., in the plaintiff's bill mentioned, and comprised in the indenture of lease, dated, &c., and in the indenture of assignment, dated, &c., and * 2238 wherein * the partnership between the plaintiff and the defendant has been carried on, are assets of the said partnership; and it is ordered that the said leasehold property, together with the trade-fittings and fixtures thereon, be sold with the approbation, of, &c.; money to be paid into Court; account of partnership dealings and transactions. Adjourn, &c. Liberty to apply in Chambers for Receiver. Raiker v. Pike, 1 Seton Dec. (Eng. ed. 1862) 543.

(g.) *Decree for dissolution from time of notice; renewed leases; partnership assets; accounts; inquiry as to most beneficial mode of sale, and if as a going concern, or as wound up; sale.*

This Court doth "declare, that the partnership in the pleadings of their causes mentioned, called the — Co., is to be deemed dissolved as from the — day of —, the date of the notice of dissolution given by Messrs. —, as the solicitors and on behalf of the defendants F. and M., as in the pleadings mentioned [or, as from the — day of —, the date of the filing of the plaintiff's bill in this cause; and doth order and decree the same accordingly]; And the Court doth further declare, that the renewed leases of the freehold mines, lands, and premises, in such leases respectively comprised, granted by, &c., the respective lessors, to the defendants, dated respectively, &c., are, in Equity, assets of the said partnership firm; And the Court doth order and decree that it be referred, &c., to take and make the following account and inquiry; that is to say: 1. An account of the partnership dealings between, &c., all severally deceased, and the plaintiff and defendants respectively, since the grant by, &c., of the lease, dated, &c., and including in such account dealings with the partnership assets, property, and estates, since the

² If the defendant's answer consents to the dissolution of a partnership prayed for in the plaintiff's bill, distribution of the assets may be decreed without a formal decree of dissolution or proof of the special grounds alleged in the bill. Burns v. Rosenstein, 135 U. S. 449.

date of the dissolution ; 2. An inquiry, of what the partnership estates, property, and effects now consist, and in what manner, and upon what terms and conditions the same may be sold most beneficially for all parties interested therein ; and whether as a going concern, or as one finally wound up ; And it is ordered that the said partnership estate, property, and effects be sold with the approbation of the Master [or, Court, or, Judge] in such manner, and upon such terms and conditions as shall appear to be most beneficial for the parties interested therein." Receiver. Adjourn, &c. 1 Seton Dec. (Eng. ed. 1862) 544, 545.

* (h.) *Account of partnership assets on bill by creditor ; one partner deceased, survivors bankrupt ; inquiry, if deceased's estate was released.* * 2239

The Court doth order and decree that the following accounts and inquiries be taken and made ; that is to say : 1. An account of what was due at the time of the death of D., deceased, from the partnership of D., &c. (*surviving partners*), to the plaintiff B. and to S. respectively ; and also what was due to all such other persons as were creditors of the partnership of D. & Co., at the time of the death of the said D. ; 2. An account of what is now due from the said partnership to the plaintiff B. and to S. respectively, and to all such other persons as were creditors of the said partnership at the time of the death of D. ; 3. An inquiry, whether the said plaintiffs and creditors, or any and which of them, continued to deal with the said, &c. (*survivors*), after the death of the said D. ; 4. An inquiry what sum or sums of money was or were paid by the said surviving partners to the plaintiffs and creditors respectively, from the death of D. to the bankruptcy [or, insolvency] of the said surviving partners, and what has been since received by the plaintiffs and creditors respectively ; 5. An inquiry whether the said plaintiffs and creditors, or any and which of them, have by such subsequent dealing released the estate of D. from the payment of their respective debts, or what, if anything, remains due in respect thereof. Adjourn, &c. 1 Seton Dec. (Eng. ed. 1862) 550.

(i.) *Same ; against administrators of deceased partner, and surviving partner.*

" Ordered, that it be referred to one of the Masters, &c., to take and state an account of what may be due to the plaintiffs upon their demand, stated in the bill, and to all other the creditors of the intestate from him, at the time of his death, either in his individual character, or as a partner of the house of B. & F., in the pleadings mentioned ; and whether by judgment, mortgage, or otherwise, and the Master is to cause reasonable notice to be given, in his discretion, either personally or inserted in such public paper or papers as he may deem proper, for the said creditors to come in before him and prove their debts ; and he shall fix a peremptory day for that purpose, and such of them who shall not come in and prove their debts by the time so to be limited, shall be excluded from the benefit of this decree ; and such persons, not parties to this suit, who

shall come in before the said Master to prove their debts are, before they be admitted creditors, to contribute to the plaintiffs their proportion of the expenses of this suit, to be settled by the said Master.

* 2240 . * And it is further ordered, that the Master take an account of the personal estate of the intestate, which hath come to the hands of the defendants (administrators), or to the hands of any other person by their order or for their use.

"And it is hereby ordered, by way of special directions to the said Master, that in taking such accounts, the administrators be not charged with any loss sustained by the act of the defendant F. on the undivided moiety belonging to the intestate, of the goods, chattels, and credits of the said firm of B. & F. in possession of F., by the administrators, and which undivided moiety is stated, in their answer, to have been of the value of 3,601 dollars and 45 cents.

"And it is further ordered, that the administrators be charged with the amount, without interest, of assets, being in money and stock, or chattels, and amounting to 665 dollars and 76 cents, and put into the possession of F. by them, as part of the partnership stock between them, and that they likewise be charged with the amount in value of goods received by them upon the insolvency of F. from the said partnership stock, and stated by them to be of the value of 491 dollars; and that they likewise be charged with the amount in value of assets admitted to be in hand unsold, and stated by them to be of the value of 500 dollars, and that they be charged with moneys received from the debts of the continued partnership formed between them and the said F., and stated by them to amount to 268 dollars.

"And it is further ordered, that they be credited with the debts of the partnership of B. & F., for which they have made themselves personally liable, as and for so much money paid by them in a course of administration, and which said debts, with the interest and costs thereon, are estimated by them to amount to 1583 dollars and 75 cents.

"And it is further ordered, in addition to these special directions, that the administrators be charged with all other assets which may have come to their hands, or to the hands of any other person for their use, and be credited with all other payments and dispositions thereof, by them made in a due course of administration.

"And it is further ordered, that the said Master make all just allowances to the said administrators for costs and expenses, but that no allowance be made, under the special circumstances of this case, by way of compensation for their time and trouble.

"And it is further ordered, that the said Master also state an account of the location, quantity, and value of the real estate of the intestate, whereof he died seised, and of the amount of the incumbrances thereon; that the Master report in the premises with all convenient speed, and that he report specially on any point, or apply for further directions, if he should deem it proper.

"And it is further ordered and declared that the balance of the
* 2241 said * personal estate that shall, upon such accounting, be found
to be remaining in the hands of the administrators unadminis-

tered, be applied, in the first place, to pay and satisfy judgment debts against the said estate, according to their respective priorities in point of time; and if any assets shall then remain unadministered, that the same be applied to pay the plaintiffs, and all other creditors, if any, who shall have come in under this decree, and proved their debts before the said Master; and if not sufficient to pay all of them, including their costs, then in ratable proportions, according to their respective amounts, and without any preferences or regard to legal priorities.

"And it is further ordered, that if any proportion of the debts, and the costs and charges thereon, shall still remain unsatisfied, the plaintiff, or any other of the creditors who shall have so come in under this decree, shall be at liberty to apply to this Court, on the foot of this decree, for a sale of the real estate of the intestate, and that the proceeds arising from such sale be applied to satisfy the proportions of debts that shall remain due, but that all legal incumbrances upon such real estate shall have preference.

"And it is further declared, that the right of application, on the part of either of the parties to this suit, for an injunction if requisite to stay proceedings on the part of any creditor at Law, either in respect to the personal or real estate, or to stay proceedings on any mortgage upon the said real estate, is left open. And all other and further directions and questions are reserved."

(j.) Account on bill by party interested under will.

Accounts and inquiries as to testator's partnership business.

Usual accounts of testator's personal estate. "And it is ordered that the said Master do inquire what was the amount of the testator's capital, stock in trade, credits, debts, and liabilities in the partnership trade, or business of a wholesale dealer in, &c., in the pleadings mentioned, on the footing of the deed of, &c.; and whether any, and which, of the debts due to the said partnership at the date of the said deed remain unpaid, and under what circumstances, and whether any, and what steps ought to be taken for recovering the same; and what is the present amount of the capital, and of the credits, debts, and liabilities of the said business, and how such capital has been derived; and it is ordered that the said Master do take an account of the business, and of the profits and losses thereof, in each year since the testator's death." Any settled account not to be disturbed; defendant P. P. (*executor*) to be charged with all moneys received by him; and be allowed all sums properly paid by him to J. H. (*agent*), for carrying on the business under the will, and having regard to its terms. And * that * 2242 the said Master do also "inquire what sums of money have been paid by the defendant P. P. to the defendant J. P., or to any other person, &c., according to the terms of the testator's will; and whether it will be fit and proper, and for the benefit of the infant plaintiff, that the said business should be carried on, and in what manner and upon what terms." (And let such steps be taken respecting the recovery of the

testator's debts and the said business as the Court [or, Judge] shall direct.) 1 Seton Dec. (Eng. ed. 1862) 553.

(k.) *Decree requiring surviving partner, who has retained the capital stock of the firm and employed it in trade to account for the profits derived from it, proper allowances being made for managing the business.*

It was ordered that it be referred to, &c., to inquire whether the concerns of the firm, as they stood at the death of M., were in any manner and how kept separate and distinct from the concerns of the firm that was carried on after his death, and whether the concerns of the new firm were in any manner, and how and to what extent, aided or supplied from the concerns of the old firm; and it was declared that the shares of profits which, after the death of M., were paid by De T., the defendant, to the junior partners of the concern, were to be considered as in the nature of wages, and to be allowed to De T. in discharge of the account of the profits of the concern; and the Master was to inquire what would be a reasonable compensation to De T. for his personal attention and credit, which was also to be allowed to him. Upon appeal this decree was affirmed, with liberty for the defendant De T., in the proceedings before the Master, to submit to the judgment of the Master any claims as just allowances which he may be advised ought justly to be made to him, by reason or on account of the management, transacting, and carrying on the business or concern, at any period or periods by them the said De T., M., De P., and F. G., or any of them, or by them the said M., De P., and F. G., or either of them, or any other person or persons: "and it is ordered, that the said Master do state in his report the facts and reasons upon which he shall have adjudged any allowances to be just allowances, if on the behalf of the plaintiff he shall be requested so to do, and state the facts and reasons upon which he shall have adjudged any allowances prayed not to be just allowances, if he shall be requested on the behalf of the said defendant to make such statements." Affirmed on appeal to the House of Lords. *Brown v. De Tastet, Jacob, 284.*

* 2243 * *Estates purchased with partnership funds distinctly traced, but conveyed to and occupied by one partner, since deceased, declared partnership property; sale decreed to pay off heirs, copartnership debts, and copartnership, balance to surviving partner. Estates to be separately sold; separate accounts to be kept by Master; any of the parties at liberty to bid; account of copartnership affairs to be taken, and of what debts remain unpaid, and of the copartnership assets uncollected, &c.; account of rents received and value of occupation rent, of repairs, taxes, and insurance, and of liens on the estates: confirmation of report, certain persons allowed as purchasers, and let into possession; decree release as to infants; distribution of proceeds; costs out of the fund.*

Circuit Court of U. States,
District of Massachusetts. } In Equity.

This cause came on to be heard at this term on the pleadings and evidence therein, and was argued by counsel as well for the defendants as

for the plaintiff, and thereupon upon consideration thereof, the Court doth now adjudge and declare it to be well proved that the plaintiff and said O. H. deceased, were copartners in business under the firm of H. & K. in manner and form as stated in the bill, and that said copartnership was dissolved on the twenty-second day of December, A. D. 1841, by the death of the said O. H.; that the said land in C. Square, and the said land in C. Street, mentioned in the bill, were purchased and the said building upon the land in C. Square was built by said firm out of and with their copartnership funds and for their copartnership uses and purposes; — that the said two parcels of real estate were originally and always held, managed, and intended by the plaintiff and said O. H. as part of their joint copartnership stock, and that the same do now constitute a part of the stock and assets of said late firm; that the said land and dwelling-house near B. Street mentioned in the bill were bought and built by said O. H., with and out of the copartnership funds withdrawn and applied by him to that purpose, secretly and without the knowledge or consent of the plaintiff; that the said appropriation of the copartnership funds to that purpose by said O. H., was a fraudulent appropriation and investment thereof by him in his own name, and that the said dwelling-house and land near B. Street ought therefore to be deemed, and is hereby declared, to be part of the copartnership stock and property of said late firm; — that said E. D., deceased, when he took his conveyance of said B. Street estate in mortgage from said O. H., had no notice of the said fraud, and was a *bona fide* mortgagee thereof, and his administrator, said E. E. D., one of the defendants, is entitled to the extent of said mortgage to be protected and to have priority of right of payment out of said B. Street estate. But that neither the widow, nor the heirs, nor the administrator, nor * the private * 2244 creditors of said O. H., are entitled to any such protection or priority. And it is further considered and adjudged by the Court that the said estate near B. Street, as well as said estate on C. Square and said estate on C. Street, ought to be sold, under the direction of the Court, by a Master, and the proceeds brought into Court, first to apply so much thereof as is necessary to discharge the mortgages thereon, and to apply the residue thereof to the discharge of the debts of the copartnership and the copartnership balance that may be found due to the surviving partner. And the Court doth further order and decree, that it be referred to G. T. C., Esquire, one of the Masters of this Court, to cause the said parcel of real estate in C. Square, and the said parcel of real estate in C. Street, and the said parcel of real estate near B. Street, to be separately sold with the approbation of the said Master at such times and places as he shall think fit, to the best purchaser or purchasers that can be got for the same to be allowed of by the said Master, wherein all proper parties are to join as the said Master shall direct. And any of the parties are to be at liberty to bid at said sales for all or any of said estates. And it appearing to the Court that said estates in C. Square and near B. Street are incumbered by mortgages or other liens, the said Master is directed to keep and state his accounts so that it may appear by his report what are the proceeds of each of said parcels of real estate. And the Court doth

further order and decree, that it be referred to the same Master to take and state an account of the partnership debts and credits at the time of the death of said O. H., and of all subsequent receipts, payments, and disbursements, by the surviving partner on the copartnership account, or in liquidation of its affairs and of the balance due from said O. H. to the plaintiff on the copartnership account. And the said Master is also to inquire and report what copartnership debts, if any, still remain unpaid by the surviving partner, and what copartnership assets, if any, still remain uncollected or unadministered, and the value thereof. And the said Master is also to take an account of all rents and sums of money, or other things of value received by said O. H. in his lifetime, or by his administrator, widow, or heirs, since his decease, for the occupation of said estate near B. Street, or which without the wilful default or neglect of him or them might have been received therefrom, and if the said estate or any part thereof has been occupied by said O. H. in his lifetime, or by his said widow, or heirs, or administrators, since his decease, to fix and report a just occupation rent therefor, and also to take an account of all sums which had been paid by said O. H. in his lifetime, or by any of the parties since his decease, for necessary repairs, taxes, or insurance upon said B. Street estate, or an account of the said mortgages thereon. And the Master is to be at liberty to state any special circumstances. And for the better discovery of the matters aforesaid, the said Master may examine either party on * 2245 oath, and may require * the production of the partnership books of said late firm, and all documents and vouchers in the possession of either party touching the premises. And the Court doth reserve the consideration of all further directions until the coming in of the Master's report upon some of the matters herein referred to him, unless either of the parties shall in the mean time apply for further directions, which they are at liberty to do, if occasion shall require.

Confirmation of Master's Report.] The report of G. T. C., Esq., the Master to whom it was heretofore referred, by a decree passed in this cause, to sell the three certain parcels of real estate, and also to take and state the accounts in said decree mentioned, having come in and been filed in the clerk's office on the first day of this term, and no exception having been taken thereto; on motion of Mr. English, the plaintiff's solicitor, it is ordered and decreed that said report do stand confirmed, and that the said M. K. be allowed as the purchaser of said parcel of real estate in C. Square, and of said estate near B. Street, and said J. L. be allowed as the purchaser of said parcel of land in C. Street, at the prices of said estates respectively reported by said Master as the highest bidder therefor.

Final Decree.] This cause came on to be further heard at this term for directions as to the final decree, and was argued by counsel, and thereupon upon consideration thereof, it was ordered, adjudged, and decreed, that the report of G. T. C., Esq., the Master to whom it was referred to convey the estates sold under the authority of a former

decree in this cause, which report was filed in the clerk's office on the seventeenth day of July, A. D. 1845, do stand confirmed; and the said M. K. be let into possession of the said estate on C. Square, and the said estate near B. Street; and said J. L. be let into possession of the said estate on C. Street. And it is further ordered, that the said defendants H. O. H., and S. S. H., respectively do as and when they shall respectively attain the age of twenty-one years, execute, acknowledge, and deliver sufficient deeds of release of the said estates in C. Square, and near B. Street, to said M. K., his heirs or assigns, and of the said estate in C. Street, to J. L., his heirs or assigns, unless the said H. O. H. and S. S. H. respectively shall, within six months after they shall have respectively attained said age of twenty-one years, show unto this Court good cause to the contrary; and in the mean time it is ordered, that the said purchasers of said estates, and their respective heirs and assigns, do hold and enjoy the said estates by them respectively purchased, and to them respectively conveyed by said deeds of said Master. And the Court doth further order, that the proceeds of said estates now in Court be paid out of Court to the plaintiff or his solicitor, less the fees of the Master, which have been already paid out to * him, — the accountable receipts of the plaintiff delivered into Court by him pursuant to a former decree to be delivered back and paid to, and taken by him as money, and that said defendant T. G. do forthwith pay to the plaintiff or his solicitor the said sum of one hundred and ninety-seven dollars and fifty cents found and reported to be due from him to the plaintiff by the first report of the Master, the said plaintiff agreeing to remit ninety-seven dollars and fifty cents thereof to said T. G. And touching the costs, the plaintiff is to recover his costs against the estate of said O. H., deceased, and the same are to be paid to him or his solicitor by the said administrator, widow, and heirs of said O. H., deceased, out of any the goods or estate of said deceased, which may now be in, or may hereafter come to, the hands or possession of them or any of them other or further than such personal property of the said deceased as may have been allowed to said widow before the filing of this bill, by the decree of the Judge of Probate for the county of M., where said deceased last resided. But as between the plaintiff and the said administrator, widow and heirs personally, and as between the plaintiff and the other defendants, the Court doth not think fit to give any costs.¹

(l.) *Partnership realty to be deemed personality.*

This Court doth declare, that the estates appearing by the Master's report [or, the said certificate] to have been purchased on account of the partnership, and out of the funds and effects thereof, did form, and are to be considered as part of, the capital and effects of the partnership, at the time of the decease of the testator, and that the testator's interest in the said estates, and such other real estates, if any, as formed part of the capital and effects of the partnership at the time of his decease, are

¹ Kelley v. Greenleaf, 3 Story, 93.

to be considered in equity personal estate of the testator. *Phillips v. Phillips*, 1 My. & K. 649; 1 Seton Dec. (Eng. ed. 1862) 555.

(m.) Inquiry whether dissolution beneficial for infants.

The defendants, the executors, by their counsel, declining to carry on the testator's trade of, &c., it is ordered that the Master do inquire, whether it be for the benefit of the plaintiffs (*the infants*) that the terms offered by the defendant S. for dissolving the partnership in the pleadings mentioned should be accepted, or that such partnership should be dissolved on any and what other terms.² 1 Seton Dec. (Eng. ed. 1862) 556.

* 2247 * *(n.) Infants declared entitled to profits against survivor, also executor inquiry; if for their benefit to take profits or interest.*

This Court doth declare that the plaintiff E. B., and the defendants, the infants, are entitled to an account of the profits made since the death of the testator in the trade carried on in his lifetime by him and the defendant R. B., as partners, and which, since his death, has been carried on by the said defendant R. B. And the Court doth order that it be referred to A. B., one of, &c., to take an account of the profits of such trade, and of the value of the stock and effects therein, and of what such stock and effects consisted; and that the said Master do inquire whether it would be more for the benefit of the plaintiff E. B., and the defendant G. B., to take the testator's share of the said stock in trade, or to accept the sum of \$____, with interest, as calculated by the report, dated, &c. 1 Seton Dec. (Eng. ed. 1862) 556, 557.

22. ACCOUNTS AS TO SHIPS.

(a.) Decree for account of ship and cargo. Inquiries as to sale between part-owners.

It is ordered, that it be referred to A. B., one of, &c., to take the account and make the inquiries following, that is to say: 1. An account of all dealings and transactions between the plaintiff and defendant relating to the ship B., and the cargo on board the same, and of all sums of money received and paid by the said parties or either of them, on account thereof; 2. An inquiry, what is become of the said cargo and by whom, and for what, the same has been sold, and how much has been received by the said parties or either of them, under an agreement or agreements made between them in relation thereto; 3. An inquiry, whether any and what sale or sales hath or have been at any time or times, and when, made of the said ship, or any or what part or parts thereof, and to and by whom, and for what price or prices respectively; 4. An inquiry, whether such sale or sales was or were a real fair sale or sales, or not, and if not, then what was the value of the said

² The Court of Chancery may appoint a person to carry on trade for an infant partner. *Thompson v. Brown*, 4 John. Ch. 619.

ship, and a fair and reasonable price to be given for the purchase thereof at the time of such sale or sales, or of such pretended sale or sales thereof; and what is become of the said ship, and in whose custody or possession the same now is, and ever since hath been. Adjourn, &c. 1 Seton Dec. (Eng. ed. 1862) 559.

* (b.) *Decree for general account as to a ship.* * 2248

The bill was by some part-owners against the managing owner and other part-owners, or their representatives.

It is ordered, that the said Master do take "an account of all dealings and transactions between the plaintiff and the defendants, relating to the ship or vessel called the J—, in the pleadings mentioned, and of all sums which have been received and properly expended by the defendant M. in respect thereof;" any account settled between the parties, or those interested for the time being, not to be disturbed. Adjourn, &c. 1 Seton Dec. 549.

(c.) *Accounts of shares and earnings, and proceeds if sold.*

This Court doth order that it be referred to A. B., Esq., one of, &c., to take an account of the several shares of ships contained in the assignment, dated, &c., and of the earnings and produce of such shares. And if the same or any of them remain in specie in the custody or power of the defendant, the same is to be sold with the approbation, &c.; but if the same or any part thereof have been sold, the said Master is to charge the defendant with the earnings thereof at the time of such sale and with the value thereof from the time of such sale; 3. And the said Master is to compute interest on the money arising by such earnings and sale at the rate of, &c. 1 Seton Dec. 559, 560.

(d.) *Decree for account of freight and earnings.*

On bill by two of the part-owners, against the managing and other part-owners.

This Court doth order that it be referred to A. B., Esq., one of, &c., to take the following accounts, that is to say: 1. An account of all sums of money which have arisen from the freight of the ship — and the profits made by the said ship, or otherwise, on account of the said ship during her voyage to J., and thence back to L, and of the several sums of money received by the defendant D., or by any other person on account of such freight and profits; 2. An account of the several sums of money expended on the outfit of the said ship, and of the expenses incurred during the voyage; 3. An account of the clear profits which have arisen from the said ship since the plaintiffs became part-owners thereof. Adjourn, &c. 1 Seton Dec. 560, 561.

* 23. SURETYSHIP.

Contribution; indemnity; original decree.

(a.) *Between co-sureties and principal, in suit by surety.*

Plaintiff's testator and defendant Wright were co-sureties for Watson, on whose default plaintiff's testator had been compelled to pay; bill charged that Watson was insolvent, and prayed contribution.

This Court doth order and decree, that it be referred to A. B., Esq., one of, &c., to take an account of all sums of money paid by T. W., the testator in the pleadings named, and the plaintiffs, his executors, or either of them, agreeably to the undertaking in the pleadings mentioned, dated, &c., and compute interest on such sums of money, at the rate of, &c., from the times the several payments were made, and tax the plaintiffs' costs of this suit (cause) and it is further ordered, that the defendant G. Wright pay to the plaintiffs one moiety of what shall be found due for principal and interest as aforesaid, together with their costs of this suit (cause) when so taxed (within, &c.). And it is further ordered, that the defendant G. Watson (within, &c.) pay to the plaintiffs the other moiety of what shall be found due for principal and interest as aforesaid, and also pay to the defendant G. Wright the principal and interest before directed to be paid by him to the plaintiffs, together with the costs of the said defendant G. Wright, to be taxed, &c., and also the costs which he shall pay to the plaintiffs under the direction before given. Liberty to apply. 1 Seton Dec. (Eng. ed. 1862) 562.

(b.) *Account of payments by plaintiff as surety, and inquiry whether some of the co-sureties can contribute.*

This Court doth order and decree, that it be referred to A. B., Esq., one of, &c., to take the account and make the inquiry following, that is to say: 1. An account of all and every sum and sums of money which hath or have been paid by the plaintiff, as one of the sureties of the defendant W. G., as collector of taxes for the town of —, in the county of —, as in the bill mentioned; 2. An inquiry, whether the defendant J., another of such sureties, is in such pecuniary circumstances that he can contribute towards the payment of the sums, if any, which have been paid by, or may be payable to, the sureties of the said defendant W. G., or either (any) of them; but the said inquiry is to be without prejudice to any question between the plaintiff and the defendant J., or between the said defendant, and all or any of his co-defendants; and the defendants S. and P. not desiring any inquiry whether the

* 2250 * defendant F. G. can contribute towards the payment of the said sums, the Court doth not think fit to direct such inquiry.

Adjourn, &c. 1 Seton Dec. 562, 563.

Contribution ; indemnity ; further order.

(c.) *One co-surety unable to pay his full share ; costs of resisting contribution.*

This Court doth order and decree, that "the defendants S. and P., as executors of F. S., one of the co-sureties, with the late plaintiff H., for the defendant W. G., as the collector, &c., under the several bonds, dated, &c., on or before the — day of —, pay to the plaintiffs T. and W., as executors of the said H., the sum of \$—, being one-fourth part of \$—, which is the aggregate amount of the sums amounting to \$—, paid by the said late plaintiff in satisfaction of the said bonds, and for the costs in the, &c., mentioned, and of \$— agreed upon as the amount of the interest on the same at the rate of, &c., from the respective times when the several principal sums were paid by the said H.; and that the defendant Suter, another of such co-sureties, within the time aforesaid, pay to the said plaintiffs T. and W. the sum of \$—, being one other fourth part of the said sum of \$—; and that the defendant J., another of such co-sureties, within the time aforesaid, pay to the plaintiffs T. and W. the sum of \$—, agreed to be paid by him; and that the defendants S. and P., within the time aforesaid, pay to the plaintiffs T. and W. the sum of \$—, agreed to be paid by them in respect of the one-fourth share that ought to have been contributed by the defendant J—. Like direction as to the defendant Suter. And the Court doth further order, "that the defendant W. G., within the time aforesaid, repay to the plaintiffs T. and W. the sum of \$—, being the difference between the said sum of \$— and the sum of \$—, the amount of the several sums so to be paid to them as aforesaid, and also repay to the defendants S. P. Suter, and J., respectively, the several amounts that shall be paid by them to the plaintiffs, under the directions hereinbefore contained; and the plaintiffs and the last-named defendants not asking any directions for contribution against the defendant F. G., another of such co-sureties, this Court does not think fit to direct such contribution. And this Court doth further order, that the defendants S. and P. and Suter pay to the said plaintiffs T. and W. so much of the costs of these suits (causes) up to this time as have been occasioned by their insisting that they were not liable to contribute anything towards payment of the said sum of \$—; but this Court does not think fit, under the circumstances of this case, to give any other costs on either side." *Hitchman v. Stewart (1855), 3 Drew. 271; 1 Seton Dec. 563.*

* (d.) *Between co-defendants, in suit by creditor.*

By the original decree, G. was to pay what on the account thereby directed should be found due from him to plaintiffs; in default, W. and wife were to pay it, reserving how far they should stand in plaintiffs' place.

It appearing to the Court that the defendants W. and his wife have paid to the plaintiffs what was reported due to the plaintiffs by the

Master's report, dated, &c., for their demands and costs of this suit, the Court doth declare, that the defendant G. ought to indemnify the said defendants W. and wife, in respect of such payment, and to reimburse them what they have so paid; and the Court doth order, that the said defendants W. and wife be at liberty to prosecute the said decree against the said defendant G., in the names of the plaintiffs, in order to recover against the said defendant G., what they have so paid to the plaintiffs; and the defendants W. and wife are to be at liberty to make use of the names of the plaintiffs for that purpose, the said defendants W. and wife indemnifying the plaintiffs against any costs or damages they may be liable to on that account. 1 Seton Dec. 563, 564.

(e.) *Contribution to general average loss.*

U. S. C. C. }
Mass. District. } May Term, 1855.

L. L. S. v. T. G. C.

This cause having been referred to W. P., Esquire, as a special Master in Chancery, to determine and report the amount which was due from the defendants, as owners of the cargo of the barque "Vernon," to the owners thereof as contribution, on account of the damages and expenses incurred in and by reason of the voluntary stranding of said vessel as alleged in said bill, the said Master having heard the parties, and their proofs, and what was alleged by their counsel, made a report which was duly presented to the Court, and to which the plaintiffs excepted, because the said Master had refused to allow to them a certain commission charged by them for services in attending to the adjustment and collection of the general average contribution; and the Court having heard the arguments of counsel on said exception, and considered the same, did order and decree that the said exception was well taken, and that the said report be recommitted to the said Master with directions to reform the same by allowing the commission aforesaid; and said report having been so recommitted and reformed, the said Master doth find and report, that there is due and owing from the said several defendants to the said plaintiffs the sums of money hereinafter mentioned, to wit: From the said T. G. C. the sum of \$____; from the said G. H. the sum of * 2252 \$____; from the said P. C. * the sum of \$____; from the said O. E. the sum of \$____; from the said G. and P. the sum of \$____; and from the several persons doing business under the firm of C. H. M. & Co. the sum of \$____; and that there is due from the plaintiffs to the said W. A. the sum of \$____; said sums of money including interest on the sums found to be due by the said Master from the date of the filing of said bill of complaint up to the date of August now current.

And said report being presented, and no exception taken or objection made thereto, it is ordered and decreed, that the same be accepted. And it is further ordered and decreed, that the said plaintiffs do recover from the said several defendants the sums of money from them respectively found to be due as aforesaid, and costs of suit to be taxed by the clerk,

and that executions issue therefore in due form of law. *Sturgis v. Cary*,
2 Curtis C. C. 382.

(f.) *Interlocutory decree,¹ declaring purchase of real estate on joint account of plaintiff and defendant, and not on sole account of defendant; right to redeem; bona fide purchaser without notice; plaintiff entitled to one-half the money received by defendant on sale of part of the estate; reference to Master to take an account.*

{ Date
and
Title.

This cause coming on to be heard upon the original and supplemental suit, before the Honorable Joseph Story, Associate Justice of the Supreme Court of the United States, and the Honorable John Davis, District Judge of the District aforesaid, at this present term, in the presence of the counsel on both sides; whereupon, and upon debate of the matter and hearing the defendants' answers, and the testimony and proofs taken and read in the said cause, and of what was alleged by the counsel on both sides,² the Court doth think fit, and doth declare, that here is full proof of the agreement of the said Flagg and Mann, that for the purchase of the right and title of the said Luther Richardson, and also for the purchase of the title of the Frye heirs, in the premises on joint account, as in the said bill is mentioned; and that the said agreement is now in full force, it never having been abandoned by the voluntary consent of both of the parties; and doth further declare that at the time of the said purchase from the said Luther Richardson by the said Flagg and Mann in the bill mentioned, the said Luther was * seised and possessed of an equity of redemption in the premises, * 2253 and that the said Walker and Fisher were seised and possessed of the premises in mortgage, and not of an absolute irredeemable estate therein; and that the said Flagg and Mann became entitled to the equity of redemption of the same, under and in virtue of the purchase from the said Luther Richardson as aforesaid; and doth further declare, that the purchases subsequently made by the said Mann from Walker and Fisher, and from the Frye heirs, ought to be deemed in Equity as purchases for the joint account of the said Flagg and Mann, as in the said bill is mentioned, and not for the sole account of the said Mann; and that the said Flagg is, and ought now to be, entitled to the benefit of a moiety of the said purchases, he paying and allowing to the said Mann one moiety of the moneys paid, and costs and charges incurred in the same purchases; and doth further declare, that, inasmuch as the said Mann was, at the time of the sale of one moiety of the premises to the said Adams, fully and absolutely entitled to the said moiety, in his own right, that the conveyance to the said Adams is, and ought to be, deemed free from any equity of the said Flagg

¹ See another form of interlocutory decree in *Pingree v. Coffin*, 12 Gray, 311, 312.

Rules of January term, 1842, were promulgated by the Supreme Court. Rule 86 prescribes a more concise form.

² This decree was passed before the U. S.

therein; but that the said Adams is not, under all the circumstances, entitled to any costs. And doth further declare, that the said Fuller is, and ought to be, deemed a *bona fide* purchaser for a valuable consideration, without notice of the equity of the said Flagg in the other remaining moiety of the premises, and therefore is entitled to hold the same free of any equity claim and lien of the said Flagg therein, except as to so much of the purchase-money as was unpaid, when he, the said Fuller, had full notice of the said Flagg's equity and claim to the premises, as the same equity and claim are affected in the bill; for all which it is hereby declared, that there is a lien on the premises for the benefit of the said Flagg; and doth further declare, that the said Mann, in the said sale of the premises to the said Fuller, as is in the bill mentioned, without the knowledge or consent of the said Flagg, was guilty of a wrong and constructive fraud upon the rights and equity of the said Flagg, in the premises, and that, therefore, the said Mann is primarily liable to pay over to the said Flagg one moiety of all the purchase-money, for which the premises were sold, after deducting therefrom one moiety of the several sums paid by him to the said Walker and Fisher, and to the Frye heirs, for the purchase, assignment, and extinguishment of the interest, rights, and title to the premises, and all expenses incident thereto; together with interest upon the same moiety of the same purchase-money, from the time when the same was received; if the Master shall, under all the circumstances, report any to be due. And the Court doth order and decree, that it be referred to C. S., Esq., appointed a Master for this purpose, to take an account of all the moneys received and paid, and expended in the premises;

* 2254 and especially to take an account of all the moneys paid * by the said Mann, for the purchases aforesaid, and the expenses incident thereto; and also of all the moneys paid by the said Fuller to the said Mann, and the times when the same were paid, &c.; and whether, and at what time, he had notice of the said Flagg's equity and right in the premises, and what sums now remain due from the said Fuller. And the Master is also to report upon all other matters and things, which may be necessary and proper to carry into full effect this interlocutory decree, and especially in regard to interest, &c., &c. And all further orders and decrees are reserved for the further consideration of the Court. *Flagg v. Mann*, 2 Sumner, 486, 565.

24. PARTITION AT THE HEARING.

(a.) Decree for partition and commission to issue.

The Court doth order, that a commission issue, directed to certain commissioners to be therein named, to divide the estate in question into moieties; and that one moiety thereof be allotted as the share of the plaintiffs, and the other moiety thereof as the share of the defendants; and that the plaintiffs and defendants hold and enjoy their respective moieties in severalty, according to such allotments; and that they execute mutual conveyances to each other of such respective

moieties, according to their respective interests therein, such conveyances to be settled by the said Master [or, the Court, or, Judge]. [*If no infants or married women interested, add, in case the parties differ about the same*]; and it is further ordered, that all deeds and writings relating to the said estate, in the custody or power of any of the parties, be produced before the commissioners upon oath, as they shall require; and it is further ordered, that the commissioners be at liberty to examine witnesses upon oath, and take the depositions in writing, and return the same with the commission. Liberty to apply.

25. SPECIFIC PERFORMANCE.

Reference of Title.

(a.) Inquiry as to title at the hearing.

This Court doth order, that it be referred to A. B., one of the Masters in Chancery for the county of, &c., to inquire, whether a good title can be made to the estates comprised in (Lot No. 3 in the particulars of sale, and in) the agreement in the plaintiff's bill mentioned.

* And in case it shall appear that a good title can be made to * 2255 the said estates, it is ordered, that the said Master do further inquire when it was first shown that such good title could be made. Adjourn, &c. Matthews v. Swallow, 1 Seton Dec. (Eng. ed. 1862) 593.

(b.) Declaration of right on bill by vendor, and inquiry.

This Court doth declare, that the agreement in the pleadings mentioned ought to be specifically performed and carried into execution, in case (provided that) a good title can be made to the premises comprised therein; and decree the same accordingly. Inquiries as to title. [Form (a), *supra.*]

(c.) Same; where title accepted subject to requisitions, and subject to compensation.

This Court doth declare, that the defendant is bound to accept the title of the plaintiff to the estate mentioned in the agreement of the — day of — in the plaintiff's bill mentioned, subject to the requisitions of the said defendant upon the said title, mentioned in the exhibit marked B, and dated, &c.; and the Court doth further declare, that the plaintiff is entitled to a specific performance of the said agreement, subject to the deduction of \$—— from the amount of the purchase-money of \$——, by way of compensation to the defendant in respect of the house-tax in the defendant's affidavit mentioned, provided that the plaintiff can make a good title to the estate comprised in the said agreement, so far as respects the matter of the said requisitions. Inquiry as to title having regard to the requisitions only. 1 Seton Dec. (Eng. ed. 1862) 593, 594.

Decree for specific performance.(d.) *On bill by vendor to enforce contract for sale.¹*

The Court doth declare, that the agreement in the plaintiff's bill mentioned, dated, &c., ought to be specifically performed and carried into execution ; and decree the same accordingly. And it is ordered, that it be referred to A. B., one of the Masters, &c., to compute interest at the rate \$—— per cent per annum, on the sum of \$——, the (residue of the) purchase-money for the estate comprised in the said agreement, from the —— day of ——, when the same ought to have been paid according to the terms of the said agreement. And the said Master is to take an account of the rents and profits of the said estate received by the plaintiffs or any of them, or by any other person, &c., since the

* 2256 —— day of ——. *If costs are given, and tax the plaintiffs * their costs of this suit (cause).* And it is ordered that what shall be coming, on the said account of rents and profits, be deducted from the amount (of the residue) of the said purchase-money, and interest (and costs) when so computed (and taxed) as aforesaid. And upon the plaintiffs' executing a proper conveyance of the said estate to the defendant (at the expense of the defendant according to the said agreement), or to whom he shall appoint, such conveyance to be settled by the said Master [or, the Court] in case the parties differ, it is ordered that the defendant pay to the plaintiffs the balance which shall be found to remain due to them in respect of such purchase-money, and interest (and costs), after such deduction as aforesaid. Liberty to apply. 1 Seton Dec. (Eng. ed. 1862) 607, 608.

(e.) *Where title accepted at the hearing.²*

The defendant R., by his counsel, declaring himself content with the title to the estate, in the pleadings mentioned, agreed to be purchased by him of, &c., this Court doth declare, that the agreement in the plaintiff's bill mentioned, dated, &c., ought to be specifically performed, &c.

(f.) *On bill by purchaser.*

Declaration and accounts as in Form (d) above.] And upon the plaintiff paying to the defendant the balance which shall be found due to him in respect of such purchase-money (and) interest (and costs), after such deduction as aforesaid, it is ordered that the defendant execute a proper conveyance of the said estate to the plaintiff, &c.

(g.) *Purchaser having waived title; indemnity against mortgage.*

This Court doth declare, that, under the circumstances in the plaintiffs' bill mentioned, the defendants have waived their right to

¹ Sale of Shares. Paine v. Hutchinson, L. R. 3 Eq. 257, 260, 261.

² Form of decree where no title is found Turner v. Marriott, L. R. 3 Eq. 744.

investigate the plaintiffs' title to the estate in the pleadings mentioned, and that they have accepted such title; and thereupon it is ordered, adjudged, and decreed that the defendants specifically perform the agreement dated, &c., by accepting an assignment of the equity of redemption of the said estate from the plaintiffs, without previous investigation of the title; and it is further ordered, &c., that the defendants execute to the plaintiffs a proper deed of indemnity against the mortgage debt secured by the indenture in the bill mentioned, dated, &c., and interest thereon, the plaintiffs, by their counsel, undertaking to execute and deliver to the defendants a proper deed of assignment of the said equity of redemption, and otherwise to specifically perform the said agreement on their own parts, so far as the same has not been * waived by the defendants; and such deeds of assignment and indemnity respectively are to be settled by the Master [or, Judge, or, the Court]. Defendants to pay plaintiffs' costs of suit. Liberty to apply. 1 Seton Dec. (Eng. ed. 1862) 609.

(h.) *Declaration as to waiver of title.*

Let the order dated, &c., be varied, and instead of the declaration therein contained, that the defendant has accepted the plaintiff's title to the estate, &c., comprised in the agreement, dated, &c., declare that the defendant has waived the right to call for the plaintiff's title to the said estate. Simpson v. Sadd, 4 De G. M. & G. 673.¹

(i.) *Voluntary settlement set aside in favor of purchaser.*

Decree for performance of agreement for sale, with consequent directions. "And it is declared by the Court, that the plaintiff is a purchaser within the intent and meaning of the Act of the 27 Eliz. c. 4, entitled 'An Act against covinous and fraudulent conveyances,' and that the indenture of settlement dated, &c., in the pleadings mentioned, is void as against the plaintiff; and it is ordered, &c., by the Court, that the defendants S. and M. (*trustees of the settlement*) convey or concur with the defendant W. (*vendor and settlor*) in conveying and assuring to the plaintiff, or as he shall direct, such parts of the estate comprised in the said agreement for sale as are comprised in the said indenture of settlement, and also deliver up to the plaintiff all deeds and writings in their custody relating to the said estate." Plaintiff to pay the trustees costs of suit; defendant W. to repay plaintiff what he shall so pay, and pay his costs up to the decree. Liberty to apply. 1 Seton Dec. (Eng. ed. 1862) 610.

Compensation or abatement.

(j.) *Inquiry, if part, to which title not shown, material.*

It is ordered, that the Master do inquire whether such part, if any, of the said estate, as to which the plaintiff cannot make a good title, is

¹ For claims respecting occupation rent, and inquiry as to value of timber and acts of husbandry, &c., see 1 Seton (Eng. ed. 1862), 609.

material to the enjoyment of the remainder, and, if not, what deduction ought to be made from the purchase-money in respect thereof.

(k.) Similar inquiry, without prejudice.

And in case it shall appear that the plaintiff can make a good title to the said estate, except, &c., containing six acres, &c., in the pleadings, &c., it is ordered and decreed, that the Master do inquire whether

* 2258 * the said six acres, &c., are material to the possession and enjoyment of the rest of the estate, and what compensation ought to be made to the defendant in respect of the said six acres, &c., in case it shall appear that the same are not material to the possession and enjoyment of the estate; such last-mentioned inquiry to be without prejudice to the question whether such six acres, &c., are material to the possession and enjoyment of the rest of the estate. 1 Seton Dec. (Eng. ed. 1862) 618, 619.

(l.) Abatement for delay.

Defendant by his answer admitting the agreement, &c., decree for performance and accounts. "And it is ordered and decreed, that the defendant be at liberty to deduct the sum of \$—, by way of compensation, for delay in delivering possession of the said estate to the defendant."

(m.) Abatement for deficiency.

The Court doth declare that the plaintiff is entitled to specific performance, &c. "And to an abatement from the residue of the purchase-money and interest, but to the amount only of what would be the worth (value) of the deficiency of the soil mentioned in the pleadings, covered with wood, after deducting the value of the wood thereon, and decree the same accordingly." And that it be referred to G. F. C., one of the Masters, &c., to settle such abatement, and to compute the interest on the residue of such purchase-money after the rate of, &c., in case the parties differ about the same; and upon the plaintiff's paying unto the defendant what the said Master shall find to be due from him on account of the purchase-money under the said agreement stipulated to be paid, after such abatement as aforesaid, it is ordered that the defendants do convey and assign the premises so contracted to be sold to the plaintiff as he shall direct; such conveyance to be settled by the said Master in case the parties differ about the same. And the Court doth not think fit to give costs on either side. 1 Seton Dec. (Eng. ed. 1862) 619.

Another form.

It is declared that the sale and purchase, in the documents and proofs stated and shown, were fair, and that the quantity of land existed, and the title, as declared, existed, and that the description given of the premises was substantially true; and that the fact that the buildings,

stated to be on lot 42, being part and parcel of the premises which were sold entire, and for one entire price, do project in a small degree, on lot 43, being another part and parcel of the said premises, is not sufficient, nor are any of the circumstances stated in *the case * 2259 sufficient, to set aside the sale, or to exempt the purchaser from being holden to the performance of the contract of sale. But as the circumstance of that projection may diminish the value of the purchase below what would be its value if such projection did not exist, and may entitle the purchaser to compensation by deduction from the price he gave; it is, thereupon, ordered, that it be referred to G. F. C., Esq., one of the Masters of this Court, to ascertain and report what, in his opinion, under all the circumstances of the case, is the diminution in value (if any) of the premises, as one entire parcel, by means of the projection, below what it would be if no such projection existed, and assuming the value thereof, if the projection did not exist, at \$1,400; and the question of costs is reserved.¹

Decree for lease.

(n.) *On bill by intended lessee.*

The Court declared that the said agreement, &c., ought to be carried into execution, according, &c., and doth order and decree the same accordingly; and that a lease be executed by the defendants S. and M. his wife, to the plaintiff of the estate comprised in the agreement for the life of said M. [or, for the term therein mentioned], at the yearly rent of, &c., and that such claims and agreement be inserted in the said lease as are directed by the memorandum of the said agreement [or, with the usual covenants]; and if the parties differ, it is hereby referred to G. F. C., Esq., one of the Masters, &c., to settle the same. And it is ordered, that the said plaintiff do execute a counterpart of such lease to the said defendants, and that such lease and counterpart be at the equal expense of the said plaintiff and defendants. And it is ordered that the plaintiff do pay the said defendants their costs of this suit, to be taxed by the said Master. 1 Seton Dec. (Eng. ed. 1862) 620, 621.

(o.) *Decree with inquiry, if leases tendered for execution are proper.**

Decree performance. And it is ordered, that the said Master do inquire whether the lease of the messuage, &c., in question, executed by the plaintiff and tendered by him to the defendant, is a proper lease; and if it shall be found that the same is a proper lease, it is

¹ Bailey v. Piper, L. R. 18 Eq. 683; Castle v. Wilkinson, L. R. 5 Ch. 534; Barnes v. Wood, L. R. 8 Eq. 424. See King v. Bardeau, 6 John. Ch. 38; Woodbury v. Luddy, 14 Allen, 1.

If one who has agreed to convey land with covenants of warranty and release of dower, is unable to procure the release of dower, a conveyance without such release and without cove-

nants relating to dower may be decreed, with compensation in damages. Davis v. Parker, 14 Allen, 94; Woodbury v. Luddy, *supra*.

For outlines of a decree in such a case, see Davis v. Parker, 14 Allen, 98, 99.

² See form of decree respecting the acceptance of a lease, and the kind of lease a party is bound to accept, in Rutgers v. Hunter, 6 John. Ch. 220, 221.

* 2260 * ordered that the defendant accept the same, and execute to the plaintiff a counterpart thereof; but, if not, that a proper lease be settled by the said Master [or, by the Judge, or, by the Court].

(p.) *Lease antedated, to enable action on covenant; defendant to admit execution or date.*

"And the plaintiff by his counsel consenting, that the lease directed by the said decree, dated, &c., to be executed by the defendant to the plaintiff, shall bear date the — day of —, and undertaking to admit in any action which may be brought under such lease for the recovery of the possession of the premises (estate), to be demised by such lease, or upon any breach or breaches of any covenant or covenants to be contained in such lease, that the said lease was executed on the day it shall bear date, it is ordered that the said decree dated on the — day of —, 1857 (for specific performance), be affirmed, &c." 1 Seton Dec. (Eng. ed. 1862) 622.

(q.) *Direction for lease to contain particular covenant.*

And it is ordered, that such lease shall contain a covenant, on the part of the plaintiff, to pay the taxes, payable in respect of said farm. 1 Seton Dec. 622.

(r.) *Specific performance of an agreement for a family compromise.*

E. L. B. v. J. L. P.

This cause came on to be heard and was argued by counsel, and the Court having considered the same, do find and declare that a concluded agreement was made between the plaintiffs on the one part and the defendant on the other part, as is stated in the said bill, the terms whereof appear in and by the letter of the defendant of the twenty-fourth day of April, A. D. 1860, which is set out in the said bill, and that the plaintiffs are entitled to specific performance thereof, and that by force of the said agreement the defendant became charged with the trust of executing the said agreement;¹ and that the defendant being about to leave the United States, without an intention to return, and having actually departed into foreign parts soon after the filing of the bill, and the plaintiffs being remediless by reason thereof save by the said bill, the Court doth retain the same for the purpose of giving the relief to which the plaintiffs are justly entitled. And it is ordered, that the plaintiffs have leave to apply to the Court for such further directions as may be needful to compel the specific performance of the said trust. Baylies v. Payson, 5 Allen, 473.

* 2261 * (s.) *Specific performance and reference of title.*

Declare, that the contract of sale between the parties was lawfully executed, and binding upon the defendant by the insertion of his name

¹ The Court refused to entertain the bill merely to declare the trust, but the defendant being about to leave the country, the trust was declared and the bill retained for further direction. Baylies v. Payson, 5 Allen, 473.

in the memorandum, which the auctioneers, as his agents for that purpose, did, in writing, immediately after taking down his bid; and I shall further declare, that the defendant did not, and could not, without the consent and agreement of the plaintiffs (and no such consent and agreement appears), withdraw himself from the obligation of the contract by presenting T. as his substitute, when he did not disclose, either to the plaintiffs or to the auctioneers, at the time of entering into the contract, that he acted as agent for T. And I shall direct the usual reference to a Master, to examine whether a good title can be given by the plaintiffs, for the house and lot sold to the defendant; and that he give to the defendant's solicitor due notice of the examination, and that the evidence taken in chief, in this case on the point of title, be submitted to the Master, together with such other competent proof as the parties, or either of them, may think proper to furnish; and that he report an abstract of such title, together with his opinion thereon, with all convenient speed. *M'Comb v. Wright*, 4 John. Ch. 670.

(t.) *For specific performance on breach of a bond to reconvey land on certain conditions, after verdict finding a neglect to perform.*

N—, ss.

S. J. C.

October term, 1857.

O. R. v. C. K. R.

And now, verdict having been returned at the last — term, that the defendant C. K. R. did neglect to perform the condition of the bond or agreement bearing date June 15, 1854, and recorded, and set out in the declaration, as the conditions are specified in the said bond, after argument by the counsel for the plaintiff and for the defendant, and due consideration thereon by the Court; —

It is [declared by the Court] that the covenant of the said C. K. R. in the said bond or agreement to discharge all his right, title, and interest in and to the farm and tracts of land conveyed by the plaintiff to the defendant by said deed dated June 15, 1854, and to give back a good and sufficient deed of said farm, and lots, and buildings, to the plaintiff, if he, the said C. K. R., should neglect to perform the condition of the bond, ought to be specifically performed and carried into execution, and that the said O. R. is entitled to a specific performance of the said covenant from the defendant, the said C. K. R. [And the same is ordered and decreed accordingly.]

It is further ordered, adjudged, and decreed, that the defendant, the said C. K. R., do, within fifteen days from the entry of this judgment, * make, execute, acknowledge, and deliver to the plaintiff * 2262 a deed of release and quitclaim in common form of all the lands and real estate described in the said deed of the plaintiff to the defendant dated June 15, 1854, with covenants of warranty against all persons claiming by, through, or under the defendant, the said C. K. R., and that he, the said C. K. R., do deliver up the possession of said lands to the plaintiff, so that the plaintiff may be thereby repossessed of and in the said lands as of his former

estate, and that in case of the neglect of the said C. K. R. within the said fifteen days, to make, execute, acknowledge, and deliver to the plaintiff such deed of release and quitclaim with covenants as aforesaid, or to deliver up the possession of said lands to the plaintiff as aforesaid, and upon affidavit of the plaintiff or his counsel filed with the clerk, that the said C. K. R. has neglected to make, execute, acknowledge, and deliver to the plaintiff such deed of release and quitclaim as aforesaid, or that he has neglected to deliver up the possession of said lands to the plaintiff as aforesaid, that then at any time after the expiration of said fifteen days, and within one year from the entry of this judgment, the clerk of this Court do make an issue, and he hereby is required to issue a writ of *habere facias possessionem*, with a copy of this decree thereto annexed, to the plaintiff, against this defendant, for the said lands described in the said deed, and set out in the pleadings, in order that upon the plaintiff's being restored to the possession of the said lands under and by virtue of the said writ of *hab. fac. poss.*, and due return and registration of said writ and return in the Record of Deeds, the plaintiff may be revested of and in said lands as of his former estate, and as he was seised and possessed thereof before the execution of said deed by him to the plaintiff on the fifteenth day of June in the year 1854.

And it is further ordered and decreed, that the plaintiff have and recover his costs of this suit to be taxed, and that the clerk do issue the execution therefor to the plaintiff in common form as usual when one party recovers costs against another in this Court. *Robinson v. Robinson*, 9 Gray, 447.

By the Court,

E. S., Clerk.

(u.) Interlocutory Decree.

Specific performance; family compromise; real estate and stocks.

F. L. and M. F. L., his wife, v. O. M. F.

And now upon consideration of the pleadings, issue, and verdict of the jury in the case, and after argument of counsel for the plaintiffs and defendant; —

* 2263 * The Court doth declare, that the articles of agreement made and concluded on the third day of July, in the year 1855, between the parties, of which a copy is annexed to the bill and made a part of the pleadings and marked (B), ought to be specifically performed and carried into execution as of the third day of July, 1855; and that the plaintiffs are entitled to have the said O. M. F. release and quitclaim to the said M. F. L., to her separate use, all the outlands and all the rest and residue of the real estate formerly belonging to the testator, to wit, &c., which lots are set out in the inventory and made a part of the pleadings; and doth decree the same accordingly.

And whereas it has not been proved or alleged that the railroad shares claimed by the plaintiffs were needed to be sold for the payment of the debts of the testator, it is further declared by the Court that the plain-

tiffs are entitled to have the defendant convey to the said M. F. L., to her separate use, two of the shares in the Old Colony and Fall River Railroad Corporation, the six shares in the Boston and Worcester Railroad Corporation, and the two shares in the Concord Railroad Corporation, all which shares were valued in the inventory made a part of the pleadings at \$794, upon the condition that the plaintiffs, the said F. L. and M. F. L. his wife, do, by deed, release to the defendant, for and during the term of her natural life, the improvement of the homestead farm of the said Isaac Fobes, deceased, with all the buildings thereon, with the privilege of cutting wood thereon for fires, and for fences and the repairs of buildings, the income of three-thirtieths of the parsonage, the use and income of the pew in the Scotland meeting house, and the use and income of the river meadow lot, and upon the further condition that the plaintiffs do, and shall, release absolutely to the defendant, for her own use and disposal, all the personal property on the said farm, also all the notes, claims, and demands due to the said estate of the testator, also the five shares of stock in the Bristol County Bank, and four of the six shares of stock in the Old Colony and Fall River Railroad Corporation owned by the said Isaac Fobes, deceased, and all other the personal estate whatsoever described in said inventory.

And it is further ordered, that unless the parties agree in regard to the matter, and execute conveyances accordingly within sixty days from the twenty-seventh day of January, 1859, and within such time the defendant pays to the plaintiffs the dividends paid upon said ten shares of railroad stock since the filing of this bill, to wit, since the eleventh day of August, in the year 1856, that then it be referred to Wm. H. W., Esq., as a special Master in Chancery, to take and state an account of the dividends declared and paid since the filing of the bill, and to prepare the conveyance to be executed by the parties in conformity with this decree, and to summon the said parties before him and cause said conveyance to be duly executed by them; the agreement of the parties * under this decree, and a copy of the deeds * 2264 in pursuance thereof to be returned into Court; — or if the case goes to the Master, his report of his doings under this decree to be submitted to this Court for approval and confirmation. Leach v. Fobes, 11 Gray, 506.

By the Court,
Wm. H. W., Clerk.

(*Final decree.*)

F. L. and M. F. L., his wife, v. O. M. F.

And now the agreement of the parties under the interlocutory decree and an office copy of the deed of the defendant, to the said M. F. L., of the real estate, pursuant to said decree, and a copy of the receipt by the said M. F. L. to the defendant having been returned into Court, by which receipt it is shown that the defendant has transferred to the said M. F. L., to her separate use, the ten shares of railroad stock mentioned in said

interlocutory decree and paid to said M. F. L., the dividends on said ten shares as reported by the Master, \$141, and \$28 more accruing between the date of said report and the time of payment in manner and form as required by said interlocutory decree. — It is now ordered, that said conveyance of real estate and said transfer of said ten shares of stocks, and said payment of dividends, in all, \$169, be, and the same hereby are, approved and confirmed.

And it is further ordered, adjudged, and decreed, that the plaintiffs have and recover hereby judgment for their costs to be taxed before the clerk in the usual form and manner, and that the clerk do issue an execution therefor to the plaintiffs. Leach *v.* Fobes, 11 Gray, 506.

By the Court,

Wm. H. W., Clerk.

(v.) *Specific performance of agreement for policy of insurance.*

U. S. C. C.
Mass. District, }

October term, 1858.

Union M. Ins. Co. *v.* C. M. M. Ins. Co.

This case was thence continued from term to term until this present term, when, to wit, on the fourteenth day of November, A. D. 1855, the same came on to be heard on the bill and answer and proofs in the case, and was argued by counsel.

And it appearing to the Court that the plaintiffs, through their agent, made a proposal in writing for insurance which contained all the necessary terms of a valid contract for a policy, and that the defendants accepted this proposal.

* 2265 * That this acceptance made a legal contract between the parties, which it is the duty of the Court to order to be specifically performed.

That, as it is admitted that the plaintiffs would have a good cause of action at Law upon a policy, if issued in pursuance of the contract, there should be decreed to them in this suit what they would be entitled to recover if a policy were issued and that which was agreed to be done were actually done;

Thereupon it is ordered, adjudged, and decreed, that the said agreement so entered into between the said plaintiffs and the said defendants set forth in the bill of complaint, and proven in this cause, be specifically performed.

It is further ordered, adjudged, and decreed, that the plaintiffs recover of the said defendants the sum of eight thousand seven hundred and two dollars and forty-three cents, as and for their damage in this behalf sustained, a deduction having been first made from the sum agreed to be issued for premium and salvage, and also the sum of two hundred and four dollars twenty-four cents, for their cost in this behalf sustained.
U. M. I. Co. *v.* C. M. M. Ins. Co., 2 Curtis C. C. 524.

(w.) *Decree for specific performance in case of sale of good-will of a business with inquiry as to subsequent dealings with the stock in trade.*

His Honor doth order, that the agreement in the bill¹ mentioned ought to be specifically performed and carried into execution, in case a good title can be made to the premises comprised therein. And it is ordered that the following inquiries be made:—

1. An inquiry whether a good title can be made to the leasehold premises comprised in the indenture of lease dated, &c., in the agreement in the plaintiff's bill mentioned; and, in case it shall appear that a good title can be made to the premises, when it was first shown that a good title could be made.
2. An inquiry what was the value on, &c. [*the date of the contract*]², of the stock of drugs, chemicals, and other medicines, implements, utensils in trade, articles, house and trade fixtures comprised in the said agreement.
3. An inquiry whether any and what part thereof and to what amount has been sold or removed from the premises, and under what circumstances. And it is ordered, that the further consideration of this cause be adjourned, and any of the parties are to be at liberty * 2266 to apply to this Court as they may be advised.

(x.) *Against specific performance; causes stated.*

“It is declared, that from the great inadequacy in value of the lots in the village of N., which the plaintiff contracted to convey to T. E., deceased, for the two farms in the county of O., which the said T. E. contracted to convey to the plaintiff, and also from the habits of intoxication in which the said T. E. had indulged, in the last years of his life, and the mental debility produced thereby, and also from the want of readiness and ability in the plaintiff to convey a good and unencumbered title to the said lots, at the time fixed for the performance of the said contract, or at any time thereafter during the life of the said T. E., the articles of agreement mentioned in the pleadings ought not, in equity and good conscience, to be decreed to be carried into specific execution by the defendants. It is, thereupon, ordered, &c., that the bill be dismissed without costs.” Seymour v. Delancy, reported in 6 John. Ch. 222.¹

¹ Bellingham v. Norrish, 16th November, 1855, M. R. A decree containing a reference as to title should contain a declaration that the contract ought to be specifically performed. Mole v. Smith, Jac. 490-495.

² In Baxter v. Connolly, 1 J. & W. 580, Lord Eldon observed that the Court would not execute a contract for the sale of a good-will, but this observation does not apply to the case

of a purchase of the good-will of a business, together with the vendor's term or interest in the house where the business is carried on. See Coslack v. Till, 1 Russ. 376; Dakin v. Cope, 2 Russ. 170; Bryson v. Whitehead, 1 Sim. & Stu. 74.

¹ For form of decree where no title is found: lien on estate for deposit and costs. See Turner v. Marriott, L. R. 3 Eq. 744, 745.

• CHAPTER XIX.

SPECIFIC RELIEF.

1. LOST INSTRUMENTS. FURTHER ORDER.

(a.) *In case of lost mortgage deeds.*

DIRECTION to tax defendant's costs of suit, and raise and pay them out of fund in Court. And the Court doth order that "the plaintiff S., at her own expense, execute to the defendant R. her bond to indemnify the said defendant against any demand which may be made upon him, in respect of the mortgage deeds in the pleadings mentioned; such bond to be settled, &c., in case the parties differ. And the Court doth further order, that, upon the due execution of such bond, such execution to be certified, &c., the residue of the said, &c., be transferred to the plaintiff S.; and thereupon that the plaintiff reconvey and reassign the mortgaged premises to the defendant R., or as he shall direct, free and clear, &c., such reconveyance, &c., to be at the expense of the defendant R." Liberty to apply.

(b.) *Like decree; with injunction.*

After declaring plaintiff entitled to redeem, and making injunction to stay ejectment perpetual; and the plaintiff having paid the principal money, the defendant to reconvey and deliver all deeds, &c., and the defendant to repay interest paid to him without prejudice by the plaintiff, after six months' notice of paying off the mortgage. "And the Court doth order, that the defendants, at their expense, give to the plaintiff a good and effectual indemnity or security in respect of the loss of the several deeds, dated, &c., in, &c., mentioned, to indemnify the plaintiff, his heirs and assigns, and his and their estate and effects, and the mortgaged premises in the pleadings mentioned, from and against all loss, costs, charges, damages, and expenses, and other consequences, which the plaintiff, his heirs or assigns, or the said premises shall or may incur, sustain, or become liable to, for or by reason of, or on account or in respect of, the said loss of the said deeds in any manner howsoever; and that such indemnity or security be settled, &c." Defendant to pay plaintiff's costs of suit and at law. 1 Seton Dec. (Eng. ed. 1862) 630.

The Court doth declare, that the defendant is bound to indemnify the plaintiff's (bankrupt's assignees) and the separate estate of the said

bankrupt against all liability and loss in respect of the bill of exchange for \$—— in the pleadings mentioned; and decree the same accordingly; and doth order that the defendant G. on or before, &c., or within one week after service hereof, take up such bill and pay what is due in respect thereof; defendant to pay plaintiff's costs of suit to be taxed. Liberty to apply.

2. FRAUDULENT DEALINGS.

(a.) *Release set aside for fraud, and not pleadable at law.*

This Court doth declare, that the release dated, &c., obtained by the defendant C. from the plaintiff M., was a fraud on her, and ought to be delivered up to be cancelled. And doth order and decree, that the defendant C. (within, &c.) deliver up the said release to the plaintiff M.; and, in the mean time, that the said defendant be restrained from pleading or setting up the said release in bar to the action brought by the plaintiffs P. and M., in the names of the plaintiffs M. and S., upon the bond executed to them by the said defendant for the benefit of the plaintiff P.; defendant C. to pay plaintiffs' costs of suit, except so much of such costs as relate to the deposition of, &c. Liberty to apply.

(b.) *Purchase completed through fraud and misrepresentation set aside.*

"This Court doth declare, that the plaintiff B. was induced to complete his purchase of the estates, &c., in the pleadings mentioned, by the fraudulent misrepresentations of the defendants A. and W.; and the Court doth further declare, that the several agreements entered into by the plaintiff for the purchase of the said estates, &c., and carried into effect and completed by him, ought to be rescinded; and the Court doth order and decree that the same be delivered up to be cancelled." And that it be referred to, &c., to take the following accounts, that is to say: 1. An account of interest on the purchase-money paid by the plaintiff to the defendant A., at the rate of, &c., from the time of payment; 2. An account of money paid by the plaintiff in respect of auction duty on the sale; 3. An account of the costs, charges, and expenses paid and incurred by the plaintiff in consequence of, and incident to the purchase; 4. An account of rents and profits received by the plaintiff; and the Court doth further order and decree, that what shall appear to be due on such account of rents and profits be deducted from the said sum of \$——, and what shall appear to be *due in respect of the interest thereof, and the said auction duty and costs, charges, and expenses; and that the balance which shall be found to be due to the plaintiff be (within, &c.) paid to him by the defendant A.; and that upon such payment the plaintiff reconvey to the defendant A. the said estates, &c.; and that the deeds of covenant executed by the plaintiff, as in the said bill mentioned, be delivered up to be cancelled. Defendants to pay plaintiff's costs of suit. Liberty to apply. *Berry v. Armistead*, 2 Kee. 229; 1 Seton Dec. (Eng. ed. 1862) 645.

(c.) Transfer of scrip shares set aside for fraud.

This Court doth declare, that the transfer by the defendant to the plaintiff of the 1000 scrip shares, formerly the property of the defendant in the P. Ry., in the bill mentioned, was paid in equity as between the plaintiff and the defendant; and that, notwithstanding such transfer, the defendant continued to be in Equity the owner of the said scrip shares, and that he is liable to repay to the plaintiff the sum of \$2100 with interest thereon, and to indemnify the plaintiff against all sales in respect of the said scrip shares, and in respect of any scrip shares in the said P. Ry., which have been substituted for, or registered in respect of, the said scrip shares, and to accept a transfer of such shares from the plaintiff. And the Court doth order and decree that the defendant M., within one month after service of this order, repay to the plaintiff B. the said sum of \$2100, together with the sum of \$208, for interest thereon, at the rate of, &c., from the twenty-first day of August, 1853, to this time, and also subsequent interest on the said principal sum to the day of payment; and the plaintiff, by his counsel, admitting that he has paid no calls in respect of the aforesaid 1000 scrip shares, in the plaintiff's bill mentioned, it is ordered that it be referred to, &c., to inquire and report what calls have been made on account of the said scrip shares, or on account of any shares in the P. Ry., which have been substituted for, or registered in respect of, such shares, and what is due in respect of such calls; and it is further ordered, that the plaintiff make to the defendant, and the defendant accept from the plaintiff a transfer of the shares in the P. Ry., which have been substituted for, or registered in respect of, the said 1000 scrip shares; and that the defendant do and concur in all acts necessary for that purpose, including the payment by the defendant of all sums which shall appear by the Master's report to be due in respect of such calls as aforesaid, and also such further sums, if any, as shall, before such transfer, become due on account of further calls in respect of the said 1000 scrip shares, or in respect of any shares which have been substituted for, or registered in respect of, such shares. Defendant to pay plaintiff's costs of suit. Liberty to apply. 1 Seton Dec. (Eng. ed. 1862) 645, 646.

**2270 * (d.) Plaintiff declared not bound by mortgage and judgment obtained from him by fraud by his solicitor, who received and misapplied the money.*

This Court doth declare, that the plaintiff is not bound by the deeds of mortgage and further charge in the bill mentioned, and thereupon doth order and decree, that the same be delivered up to be cancelled; and that satisfaction be entered upon the judgment, in the bill mentioned, obtained by the defendants C. and R. (*mortgagees, innocent parties*) against the plaintiff; defendants to pay plaintiff's costs of suit. Wall v. Cockerell, 1 Seton Dec. (Eng. ed. 1862) 648.

(e.) *Settlement by lunatic, since so found, set aside.*

And it appearing by the evidence aforesaid, that the indenture of settlement, dated, &c., made or expressed to be made between F. of the one part and the defendants M. and S. of the other part, was executed by the said F., since deceased, when of unsound mind, the Court doth declare, that the said indenture of settlement of the — day of —, is null and void; and it is thereupon ordered and decreed, that the defendants M. and S. deliver up the said indenture of settlement to the plaintiff to be cancelled. Directions to tax, raise, and pay costs of all parties out of fund in Court (*being the settled fund*), and for transfer of the residue to the legal representatives of the lunatic. 1 Seton Dec. (Eng. ed. 1862) 648.

(f.) *Conveyance in contemplation of insolvency set aside as fraudulent.*

"This Court doth declare, that the indenture dated, &c., in the pleadings mentioned, is fraudulent and void as against the creditors of the insolvent debtor in the pleadings named; and doth order that the defendant deliver up the said indenture to the plaintiffs to be cancelled; and the Court doth order and decree, that it be referred to, &c., to take an account of the rents and profits of the estate comprised in the said indenture received by the defendant or by any other person, &c.; and that the said defendant, within one month after the date of the Master's report of the result of such account, pay the balance, if any, that shall be found to be due from him to the plaintiffs C. and W., as assignees of the estate of the said insolvent debtor."— Defendant to pay plaintiffs' costs of suit.— "But, in case, on taking the said account, any balance shall appear to be due to the said defendant, it is ordered that the further consideration of this cause and of the subsequent costs, be adjourned," &c. Cazenove v. Pilkington, 1 Seton Dec. (Eng. ed. 1862) 649.

*(g.) *Decree declaring a party estopped from asserting a legal title after acquiescence in the purchase of the premises by a bona fide purchaser from a third party.* * 2271

"It is declared and adjudged, that the defendant encouraged and advised the sale, by E. F., and the purchase, by the plaintiff, L. S., of the six and a half acres of land, in the village of B., devised by the will of R. F. to the said E. F., and in the pleadings and proof mentioned; and recognized and admitted the title derived under the said will, and for the space of nearly or about — years subsequent to the death of the said R. F., and with the knowledge of her will, the defendant acquiesced in the acts of ownership of the said E. F., as devisee under the said will, and of the said L. S., as purchaser under the said E. F. And it is further declared and adjudged, that the defendant is in Equity concluded and estopped, by those acts and admissions, from asserting his legal title, as heir of the said R. F., to the said six and a half acres of

land, against the claim or title thereto, on the part of the plaintiffs, derived under the will of the said R. F., and that the declaration by the defendant of his ignorance, during all that time, of the invalidity in Law of the will of the said R. F., if well founded in point of fact, is no sufficient defence against the equitable bar to his legal title, arising from the acts and admissions aforesaid; inasmuch as, with knowledge of all the facts, he was bound to inform himself of his own title, before he undertook to advise and encourage the sale and purchase of the same land by others, under an adverse title. It is, thereupon, ordered, adjudged, and decreed, that the defendant, and all persons claiming under him, be perpetually enjoined from prosecuting at Law, by action of ejectment, or otherwise, his right, claim, or title, as heir to his daughter R. F., to the six and a half acres of land aforesaid, as against the plaintiffs or either of them, or as against any other person or persons, claiming or possessing the same, by, from, or under them or either of them, or under any right or title derived from them or either of them; and the injunction heretofore issued in this cause is hereby declared to be perpetual. And it is further ordered, that a copy of this decree be served on the defendant, and on his solicitors, attorneys, and counsel, to the end that due obedience may be rendered thereto. And it is further ordered, adjudged, and decreed, that no costs of this suit be charged by either party as against the other."¹ Decree entered in Storrs v. Barker, reported 6 John. Ch. 166.

* 2272 * (h.) *On a bill to rescind a contract for the purchase and sale of timber lands, on account of material misrepresentation ; to obtain repayment of the money advanced, and to have the notes given for the balance discharged and cancelled, or compensation made and the plaintiff indemnified.*

This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it is declared by the Court, that the contract of sale, and the conveyance of the premises, and the notes of the said Daniel thereupon, as set forth in the bill, were made by and between the said Otis Daniel and the said James Todd and other parties, upon material misrepresentations and mutual mistakes as to the quantity of timber on the premises so sold, and therefore ought to be set aside, and held null and void; and the said Otis Daniel ought to be repaid the amount of the said purchase-money, actually paid by him thereupon and therefor, by the said Todd, who received the notes for the same, and in his aid and for his relief, by such of the other parties, defendants to the bill respectively, for whom the said Todd acted as agent, or who with a full knowledge of, and assent to, the said contract of sale and misrepresentations and mistakes, have received any of the said notes, or any part of the purchase-money paid thereon by the said Daniel; but not for the part thereof received by any other party. And

¹ The form of a decree based upon the same principle, with variations as to the particulars of the order, and a reference to Master to take

an account of rents, profits, taxes, repairs, permanent improvements, &c., will be found in Wendell v. Van Rensselaer, 1 John. Ch. 344.

thereupon, in furtherance of the declarations aforesaid, it is further ordered, adjudged, and decreed, that the same contract of sale, and conveyance, and notes, be, and hereby are, annulled, rescinded, and declared utterly void, and of no effect.

And the said Otis Daniel is further ordered, adjudged, and decreed, to reconvey the premises by such due and reasonable conveyance or conveyances as shall be devised and reported by a Master, when and so soon as the purchase-money actually paid by him shall be repaid as hereinafter mentioned.

And it is further ordered, adjudged, and decreed, by the Court, that the said James Todd be, and hereby is, held directly liable to the plaintiff for the whole amount of moneys paid as aforesaid, deducting, however, therefrom the proceeds of timber sold, as well as the value of timber taken from the said lands, by and under authority of the said Otis Daniel, and remaining unsold, and making all due allowances for all proper charges and expenses incurred in regard to said timber, and for taxes paid on the said lands.

And it is further ordered, adjudged, and decreed, that such of the other parties, defendants to said bill, as with a full knowledge of the premises, or for whom the said Todd acted as agent, or who assented to the said contract of sale and conveyance, with a full knowledge of the premises, shall be, and hereby are, decreed to be liable in aid and relief of the said Todd, to pay and deliver back to the said Otis Daniel *such parts or portions of the purchase-money paid by the said Daniel for the said lands, as have been received by them respectively in the premises, or on the notes of the said Daniel so received by them; but no one of them to be liable for any purchase-money or notes received by any of the other parties, defendants.

And it is further ordered, adjudged, and decreed, by the Court, that no damage or interest on the aforesaid moneys be allowed, except the proceeds of such timber, sold and unsold, as aforesaid, shall furnish a fund therefor; and in that event, interest upon said purchase money to be added thereto, as an offset *pro tanto* to the excess of said proceeds not exceeding the amount of such excess.

And it is further ordered, adjudged, and decreed by the Court, that it be referred to S. L., Esquire, as Master, to ascertain the amount due to the plaintiff on the basis of this decree, and also the particular notes and sums received by each of said defendants of said purchase-money, so paid and secured as aforesaid, and to report the same to the Court.

And it is further ordered, adjudged, and decreed by the Court, that the Master be clothed with full power to examine, as well the parties, as any other witnesses, orally or upon written interrogatories, under oath, in the premises, and to require the production of all vouchers, papers, and other documents pertinent and proper in the premises; and that he state a full account in the premises, upon the basis of this decree. And that he be clothed with all the usual powers and authorities of a Master, in all things touching the premises.

And all further orders and decrees are reserved for the consideration of the Court. *Daniel v. Mitchell, 1 Story, C. C. 196-198.*

(i.) *Decree declaring a levy void, enjoining not to set up any title under it, and ordering a release.¹*

This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed by the Court, that the said levy on the land in the said Charlestown, in the pleadings mentioned, being made with full notice of the title of the plaintiff in the bill mentioned, the title thereto is a fraud upon the plaintiff, and therefore is to be held utterly void; and the Court do declare the same accordingly. And it is further ordered, adjudged, and decreed by the Court, that the said defendant, his heirs and assigns, be perpetually enjoined not to set up or assert any title thereto against the said plaintiff, his heirs and assigns, under the said levy; and that the said defendant do execute, in due form of

law, within thirty days from the entering of this decree, a

* 2274 deed * of release of all his right and title under the said levy to the said plaintiff, his heirs and assigns, in such form as shall be settled by T. P. Esquire, one of the Masters in Chancery of this Court, and that the plaintiff recover costs. Briggs v. French, 2 Sumner, 261.

(j.) *Decree declaring void the levy of an execution in favor of a judgment creditor of an insolvent debtor upon the debtor's reversion of real estate, after the first publication of notice of issuing the warrant.*

This cause came on to be heard upon the pleadings and the proofs, as reported by the Judge who heard the cause sitting in Equity in Boston on the twenty-third day of August in the year 1862, and was argued by counsel; and after due consideration the Court doth declare the levy of the defendant's execution upon a portion of the reversionary interest in said lands, formerly belonging to said L. S., to be null and void, as against the plaintiff, as such assignee of said L. S., an insolvent debtor; and that the plaintiff, as such assignee, holds in fee the entire one undivided half of said farm and lands described in said deed of J. S., the father, to said L. S. and J. S., Jr., bearing date the fourth day of December, in the year 1848, subject to the life-estate of said J. S. therein, upon the trust to sell the same for distribution among the creditors of said L. S., and it is ordered, adjudged, and decreed that the said W. W., upon the tender to him of a release to the plaintiff of said lands so levied on, do, and he hereby is required to execute, acknowledge, and deliver the same to the plaintiff, under the penalty, in case of a refusal so to do, of what may befall thereon; and that the plaintiff have execution, in common form, forthwith, against said Whiston, for his costs of this suit to be taxed by the clerk. Hall v. Whiston, 5 Allen, 126.

E. R. H., J. S. J. C.

Attest Wm. H. W., Clerk.

¹ The form of decree in case where execution had been fraudulently issued and sale made under it;—declaring title under sale void and directing accounts, see Troup v. Wood, 4 John. Ch. 260, 261.

(k.) *Setting aside a fraudulent conveyance charging the real estate with a judgment debt, although not directly liable to an execution, and not permitting the conveyance to stand as security for advances made on account of it to the grantor, with the meditated intent to defraud.¹*

This cause came on to be heard at this term, and was argued by counsel, and thereupon upon consideration thereof,

It was ordered, adjudged, and decreed as follows, to wit, that the conveyance made by the said S. S. mentioned in the bill and answers in this cause, bearing date the fifteenth day of September, A. D. 1809, to the said Esther Steene and Elizabeth Foster, and William Steene and *the said William Foster, for two certain farms lying in G. & F. * 2275 in the county of P., within said district of R. I., containing three hundred and thirty-five acres of land, one called the Wells farm and the other called the Rounds farm, and also the conveyances in the said bill and answers mentioned, made by the said S. S. to the said Z. S., bearing date the fifteenth day of September, A. D. 1809, for a farm or lot of land, situate in Smithfield, in said district, and known by the name of the Waterman lot, containing fifty-four acres, and also the conveyances in the said bill and answers mentioned, made by the said S. S. to D. S. and to D. S. and the said A. S., bearing date the fifteenth and eighteenth days of September, A. D. 1809, for the farm on which the said D. S. then lived, situate in G. aforesaid, called the D. E. farm, lying on both sides of the turnpike road; and also the deed in the said bill and answers mentioned, made by the said S. S. to the said Z. S. bearing date the eighteenth day of September, A. D. 1809, for a lot of land situate in said G., containing twenty-six acres; and also the deed, in the said bill and answer mentioned, made by the said S. S. to the said Z. S. and S. S., Jr., bearing date the twenty-second day of November, A. D. 1809, for the farm, whereon the said S. S. then lived, situate in the said G., it being all the land he purchased of John Eddy, &c., and is about three hundred acres, were made by the said S. S. with the intent to defraud his creditors, and particularly the plaintiff, and are, therefore, as to the plaintiff, utterly void.

But inasmuch as it appears to the Court, that the real estate so as aforesaid conveyed to the said D. S., and to the said D. S. and A. S. have, with the exception of a life-estate therein still held by the said A. S., been conveyed to persons who are not parties to the present bill, and the plaintiff seeks no relief against them, it is further ordered, adjudged, and decreed, that the said life-estate of said A. S. only be subject to the debt of the plaintiff in this suit, in manner as herein-after stated, without prejudice to the rights of persons not parties to this bill.

And it is further ordered, adjudged, and decreed, that the said conveyances before mentioned, having originated in a meditated fraud upon the creditors of the said S. S., cannot be permitted to stand as a security

¹ See Pratt v. Pond, 5 Allen, 59. A judgment creditor's bill, filed to reach property or interests unknown to the plaintiff, and perhaps

concealed, need not indicate the property sought to be reached. Dutton v. Thomas, 97 Mich. 93.

for any debts then due to the grantees, or for any subsequent advances by them made in furtherance of the original intention of the parties thereto.

And it is further declared and decreed, that the plaintiff has a right to be paid the principal debt due to him, with interest up to the time of this decree, and that the same ought to be, and is decreed to be, a charge on the same lands, and on the rents and profits (making all proper allowances), which have accrued to the respective respondents, or might have accrued to them without wilful default, since the

* 2276 estates * contained in the same conveyances have come to their hands, possession, and use; and it is declared and decreed, that the said lands, rents, and profits are specifically holden for, and charged with, the payment of the plaintiff's said debt.

And it is further declared and decreed, that the defendants be permitted to pay in the proportion of the value of the estates respectively conveyed to them, to be ascertained by a Master, the amount due to the plaintiff for principal and interest with costs, if they shall elect so to do, within sixty days from the date of this decree, and in that event the plaintiff is to assign to them, by conveyances to be approved by a Master, all his right and title to the judgments stated in his bill, and to the debts due, and his right and title under this decree; and the defendants shall be admitted to hold the same accordingly as a charge on the same lands; but if the defendants shall not pay the said debt and costs within the period aforesaid, then the same Master is to ascertain the rents and profits of the said estates as aforesaid, which are to be paid by the defendants respectively towards the discharge of the plaintiff's debt, and if this fund shall not be sufficient, or shall not be productive, then it is further declared and decreed, that the Master shall sell the lands so conveyed to the defendants by the conveyances aforesaid, or a sufficiency thereof to pay the plaintiff's debt, interest, and cost, at public auction to the highest bidder, in manner as shall hereafter be decreed by the Court, and make due and legal conveyances thereof to the purchaser or purchasers thereof, and the defendants S. S., Z. S., A S., S. S., Jr., E. S., W. F., and E. F. shall respectively join in such conveyance or conveyances, releasing their right, title, and interest therein and thereto, and covenanting against their own acts, in such manner as the Master shall approve, and the proceeds of such sale shall be brought into this Court to discharge the plaintiff's debt and costs of suit.

And it is further declared and decreed, that it be further referred to the same Master, to ascertain by an examination of the plaintiff on oath or otherwise, what was the value at which the plaintiff received the Farmers' Exchange bills for which the drafts, on which his judgments were founded, were given, at the time when he received or bought the same, and that the plaintiff is to be allowed that sum, the damages on said drafts at the rate allowed by law, on the bills of the like nature, and his costs of suit, in the State Courts of R. I., as his principal debt, and the interest is to be computed thereon as aforesaid, and the same Master is to make his report as soon as may be, and in

the mean time all further proceedings and orders are reserved for the consideration of the Court. Bean v. Smith, 2 Mason, 299-303.

* (l.) *Assignment, made with intent to defeat heir, of a judgment declared void. Sale ordered of the estate still in hands of the assignees; they to unite in the conveyance. If proceeds insufficient to satisfy judgment, &c., assignees to be charged with value of the estate sold by them; just allowances of expenditures, &c., prior to judgment. Reference to Master, &c.* * 2277

This case came on to be heard, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered and decreed,—

1. That the assignment made by S. L. to M. B. and W. L., under date of the 13th May, 1842, and which is set forth in the pleadings, be declared fraudulent and void. 2. That the real estate and all other property conveyed by the above assignment from the said S. L. to the said assignees, and unsold by them, be sold by and under the direction of the Receiver heretofore appointed in this cause, he giving such notice of the time and place of sale as is required on sales by a Master of this Court, the defendants to unite in the conveyances of the real estate and in the acknowledgments of the deeds. 3. That the proceeds of the sales, and other funds that may be in the hands of the Receiver, be paid over to the plaintiffs, in satisfaction of their judgment set forth in the pleadings, with interest and costs of this suit to be taxed. 4. If the said moneys shall be insufficient to satisfy the judgment and costs, then that the assignees be charged jointly with the value of the assigned property, real and personal, sold or disposed of by them, and with the rents and income thereof, which they received or might have received with ordinary care and diligence, after the date of the assignment, and before the property came into the possession of the Receiver; the assignees to be allowed all payments of principal and interest on incumbrances upon the property, existing prior to the judgment, all sums paid for taxes, assessments, needful repairs, insurance against fire, and other charges and expenses in the proper care and management of the property, but no commissions or costs of this suit to be allowed. 5. A reference to J. W. N., one of the Masters of this Court, to take an account upon the principles of this decree, before whom all the defendants shall appear upon summons served upon them, and produce all deeds, papers, books, and documents, and be examined on oath, on application of the plaintiffs, touching any of the matters embraced in the reference; the Master to approve the form of the conveyances to be executed; the plaintiffs to be allowed their taxed costs of this suit out of the funds; and if the same shall be insufficient to pay the judgment and interest, such costs to be paid by the assignees; and execution to issue, on confirmation of the Master's report, for the balance, if any, which the Master shall report to be due on such accounting, and for the costs of the plaintiffs; the Receiver to pass his accounts before the Master, who is to report a proper allowance for him to be by him retained out of the funds in his hands.

* 2278 * (m.) *Decree in favor of heirs, declaring void a deed obtained from their ancestor by imposition, he being weak in mind and body, except as to actual advances and charges, for which the deed is allowed to stand as security.*

This cause came on to be heard by consent of counsel, at the last term of this Court, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed by the Court as follows, viz., that the deeds of conveyance dated the ninth day of May, 1805, and executed by C. W. to A. H., in the pleadings mentioned, ought not to be permitted to stand as absolute and *bona fide* conveyances to the said A. H., the same having been obtained from the said C. W. by the said A. H., by imposition upon him, he being at the time of the execution thereof in a state of great mental and bodily weakness, as well from the visitation of Providence as from his extreme old age. And it is further ordered, decreed, and declared by the Court, that, under all the circumstances of the case, the same deeds of conveyances ought to be permitted to stand as security¹ for any advances made, and charges incurred, and allowances due, to the said A. H., by reason of the premises stated in the pleadings, but no further; and as to all other purposes the same are to be held and decreed to be utterly void; and the same is hereby ordered and decreed accordingly.

And it is further ordered and decreed by the Court, that it be referred to A. B., Esq., a Master for this purpose, to take an account of all debts, claims, and dues between the said A. H. and the said C. W., during his lifetime; and, in taking such account, the said Master is to charge the said A. H. with all the personal estate received by him from the said C. W., including that conveyed by deed of gift to his wife, as in the pleadings mentioned, and also with all the rents and profits of said real estates; and the said A. H. is to be allowed credits for all advances made, and charges incurred, and allowances due, for labor and services to and for the said C. W. during his lifetime; and also credit for all repairs and improvements made by the said A. H., in and about the same real estates. And the said Master is also to take in like manner an account of all the rents and profits of the same real estates since the death of the said C. W., and is in like manner to be allowed credit for all repairs and improvements on the same estates during the same period. And the said Master is to give notice of his meetings, for the purpose of taking into consideration the premises, to all the parties in interest.

¹ Where possession had been taken of land, and improvements made, under an agreement which was not sufficient to take the case out of the Statute of Frauds, though the Court would not grant relief, on the ground of part-performance, yet the bill was retained for the purpose of affording the party a reasonable compensation for beneficial and lasting improvements.

Parkhurst v. Van Cortlandt, 1 John. Ch. 273. See the decree in that case. For form of decree where bond and mortgage had been obtained by oppression for a much larger sum than was due, ordering them to stand for security for amount due, and a re-transfer on payment of that amount, see Neilson v. M'Donald, 6 John. Ch. 201, 212.

* And all further orders and directions are reserved until the * 2279 coming in of the Master's report. Harding v. Wheaton, 2 Mason, 390-392.

(n.) Decree setting aside a sale of a testator's share in a partnership trade, &c., by the executors, to his partners, for the purpose of being resold to one of his executors, and ordering an account of the subsequent profits, as if the partnership had continued, in favor of the estate.

This cause came on this day [or, this term] to be heard, and was argued by counsel for the plaintiff and for the defendant; and thereupon, upon consideration thereof, this Court doth declare, that the sale of the said testator's interest in the copartnership concern in the pleadings mentioned is void. And this Court doth also declare that the interest of the executors of the said testator W. C. in the said copartnership concern is not yet terminated. And this Court doth order that it be referred to A. B., Esquire, one of the Masters of this Court, to inquire what is the most beneficial mode for all parties of disposing of the partnership property and effects. And the said Master is to state the same, with his opinion thereon, to the Court, and is to make a separate report thereof, with liberty to state such special circumstances as to him shall appear material, and thereupon such further order shall be made as shall be just. And it is ordered, that the said Master do take an account of the profits of the said trade, from the last settlement of accounts which the said Master shall find to have been made by the said testator or his executors, since his death. And is ordered that the said Master do take an account of all such sums of money as have been taken out of the said trade, and all such sums of money as have been paid to the executors of the said W. C. for or in respect of the said testator's interest in the said partnership business and property, by any of the parties, and state when and by whom the same have been so taken out. And it is ordered that the said Master do take an account of all sum or sums of money which shall have been advanced or paid to the executors of the said W. C. for or in respect of the alleged purchase of the said testator's interest in the said trade in the pleadings mentioned, and calculate interest at the rate of — per cent per annum upon such sum or sums as he shall find to have been so advanced and paid. And this Court doth reserve the consideration of the allowance of such interest until the account of the profits shall have been taken. And for the better taking of the said accounts, and discovery of the matters aforesaid, the parties are to be examined, &c., and to produce, &c., as the said Master shall direct, who in taking the said accounts is to make unto the parties all just allowances, and as to such of the said allowances as are claimed and objected to before the said Master, he is to state his reasons on allowing or disallowing the same. Further directions and costs reserved, and liberty to apply.¹ Cook v. Collingridge, Jacob, 607.

¹ See the decrees entered in Brown v. De Tastet, Jac. 284.

- * 2280 * (o.) *Decree declaring void a direction, in a devise of an estate for charitable purposes, that the rents should not be raised, and declaring that there was no resulting trust for the heir-at-law as to the increased rents, &c.*

This Court doth declare, that the directions contained in the will of M. R. the testatrix, in the pleadings named, and the rules thereto annexed, which require that the rents of her estates therein mentioned should continue the same as at the time of her decease, and that no attempts should be made to raise the same, are void, and that the defendant, C. S., the heir-at-law of the said testatrix, hath no right or interest to or in the said real estates, or the rents and profits thereof, or any part of such rents and profits, by way of resulting trust or otherwise. And the Court doth declare that the surplusage of the rents and profits, &c. And it is ordered that the information and bill as to the said C. S. be dismissed, with costs to be paid as after mentioned. And the Court doth not think proper to give any directions touching the application of any part of such surplus rents and profits, and forfeitures, &c., or to proceed further than to make such declarations of the rights of the parties as herein are contained, and such order as to costs as hereinafter given; and, subject to such declarations as are hereinbefore contained, and to such directions as to costs as are hereinafter given, the Court doth order that such information and bill be dismissed. And it is ordered that it be referred to A. B., Esq., one of, &c., to tax all parties their costs of this suit, as between solicitor and client, and also to tax in like manner the costs of the said relators and plaintiffs, and of the said defendants the said Master and Fellows, of a certain petition touching the matters in question in this suit, presented in the year 1813, to the right honorable, the Lord High Chancellor of Great Britain, therein styled visitor of the said college or hall in right of his Majesty, and of all proceedings under the said petition. And it is ordered that such several costs, when taxed, be paid by the defendants the said Master and Fellows, out of any stocks or funds in their possession which have arisen from the rents and profits of the estate of the said testatrix. Att'y-General v. The Master and Fellows of Catherine Hall, Cambridge, Jacob, 381.

- (p.) *Substance of a decree, setting aside a discharge of a mortgage, entered by mistake in the margin of the record thereof in the registry of deeds.*

The Court decreed that the words of discharge of the mortgage were written upon the margin of the record book in the registry of deeds by accident and mistake, and did not form an actual payment of the mortgage debt, or cancel or discharge the mortgage, but were inoperative and void, and left it in the same force and effect as before; and then the defendant and all persons claiming by, through, or * 2281 under * her should be prohibited and enjoined from setting up, using, or relying upon said words of discharge, either as proof

of payment of the debt, or a discharge of the mortgage, with liberty to either party to apply to the Court hereafter.¹

3. DECREE FOR SALE AND REIMBURSEMENT TO CHILDREN OUT OF THE PROCEEDS OF AN ESTATE, THE INCOME OF THE RESIDUE OF WHICH, AFTER PAYMENT OF DEBTS AND LEGACIES, HAD BEEN GIVEN TO THEM BY THE WILL OF THE TESTATOR, BUT WHICH INCOME, WITH THEIR CONSENT, HAD BEEN TAKEN TO PAY OFF THE SAID DEBTS AND LEGACIES, WHICH WERE DIRECTED BY THE TESTATOR TO BE PAID BY THE SALE OF CERTAIN OF HIS REAL ESTATE.

This cause came on to be heard upon report, and was argued by counsel, and, having been duly considered, the Court doth declare, that the plaintiffs, as equitable tenants for life under the will of the testator, F. A., are entitled to the entire income of the residue of the estates held by the defendant as trustee, subject to the deduction of all sums of money, legally paid or due as and for interest of debts and legacies, cost of repairs, taxes, and other expenses, and to a charge upon the said estates for so much of the said income as had been applied to the payment of the principal of the said debts and legacies, and to have so much of the said trust estates as may be necessary sold and applied to their reimbursement; and it appearing that the said defendant, in his capacity as trustee, has heretofore been authorized by this Court to sell, and has sold, a part of the said trust estates, and now holds the proceeds thereof, it is ordered and decreed that he shall apply so much thereof as may be necessary to their reimbursement, and the payment of all and singular any debts and legacies now remaining unpaid, and that if such proceeds should not be sufficient to make such payment in full, the defendant in his capacity as trustee shall sell at public or private sale such of the lands and tenements held by him as he may deem expedient, and apply the proceeds thereof, or so much as may be necessary, to such payment; and it is further ordered and decreed, that before proceeding to make any such sale or sales, the said defendant, trustee as aforesaid, shall give bond in such sum and with such sureties as shall be approved by one of the justices of this Court, that he will faithfully conduct the same and * account for the proceeds; and * 2282 it is further ordered and decreed that the cost of this suit and fees of counsel, as between solicitor and client on both sides, are a charge upon the proceeds of sales now in the hands of the defendant, or hereafter to be received, and are to be paid from out thereof, and either party is at liberty to apply for further directions, and for the appointment of a Master to take the said account, if the parties do not agree thereon. Amory v. Lowell, 1 Allen, 508.

¹ Bruce v. Bonney, 12 Gray, 107, 113.

4. DECREE DECLARING THE VALIDITY OF A DEED TO TRANSFER THE ESTATE NAMED IN IT, AND ORDERING THAT THE GRANTEES BE LET INTO POSSESSION OF THE PREMISES, AND THAT THEY BE ALLOWED TO HAVE AND ENJOY THE RENTS, PROFITS, AND INCOME THEREOF.

That the deed of conveyance from the defendants J. A. and E. A., his then wife, to the defendants D. W. C. and R. D. A., bearing date the 25th November, 1805, mentioned and set forth in the pleadings and proofs in this cause, was duly executed and delivered by J. A. and E. A., his then wife, on the 25th December, 1805, so as to pass the estate and interest in the messuage and premises therein described, to the defendants D. W. C. and R. D. A., and to vest the same in them, to the uses, and upon the trusts, therein mentioned; and the deed of conveyance is hereby declared valid and effectual in the law, accordingly. And it is further ordered, adjudged, and decreed, that the plaintiffs S. M. S. and E. B. S. his wife, in her right, be forthwith let into possession of the premises mentioned and described in the deed of conveyance from the defendants J. A. and E. A., his then wife, to the defendants D. W. C. and R. D. A., bearing date the 25th November, 1805, and into the perception of the rents and profits thereof, in arrear and unpaid, and hereafter to accrue and become payable, or that D. W. C. and R. D. A. be immediately let into possession thereof, as trustees, upon the trusts, and to the uses, in the deed expressed and declared, of and concerning the same. And in case D. W. C. and R. D. A., or the survivor of them, shall take possession of the premises, they, or the survivor of them, shall receive and take the rents and profits thereof, in arrear and unpaid, and which shall hereafter accrue, and become payable, in trust for, and pay over the same from time to time, to S. M. S. and E. B. S., his wife, in her right, during their joint lives, to E. B. S., during her life, if she shall survive S. M. S., her husband; or they, D. W. C. and R. D. A., and the survivor of them, shall permit S. M. S. and E. B. S., his wife, in her right, to take the rents and profits during their joint lives; and that E. B. S. is to take the same during her life, if she shall survive her husband, and after the death of E. B.

* 2283 * S., one of the plaintiffs, the rents and profits of the premises shall be received, paid, and applied, according to the uses and trusts in the before-mentioned deed of conveyance, bearing date the 25th November, 1805, limited and declared. And that the trustees, or the survivor of them, and any other person then claiming an interest therein, under the deed of conveyance, shall be at liberty to apply to this Court for its direction in that behalf. And it is further ordered, adjudged, and decreed, that the defendants D. W. C. and R. D. A. shall, within twenty days after notice of this decree, cause the deed of conveyance to be acknowledged, or proved, and recorded according to law, for the greater safety of the title of the plaintiffs in this cause to the premises therein contained, and all others who may become interested therein. And it is further ordered, adjudged, and decreed, that the plaintiffs, during their joint lives, and E. B. S., after the death of S. M. S., her

husband, if she shall survive him, shall be at liberty to use the names of the trustees, or the survivor of them, and to have the use of the deed of conveyance for the purpose of prosecuting at Law, or taking any reasonable measures, to obtain the possession of the premises, and for receiving the rents and profits thereof, according to their and her rights to the same, as hereinbefore declared and adjudged. And it is further ordered, adjudged, and decreed, that the defendant J. A. account with the plaintiffs in this cause, for the rents and profits of the premises, from the twenty-third day of January, 1809, and that it be referred to one of the Masters in Chancery to take the account accordingly; and that in taking the account, the Master charge J. A. with the rents of the premises received, or which, without wilful default, might have been received for the same; and that the Master make all just allowances to J. A. for taxes and repairs; and that the Master shall take the account, and report thereon to the Court, with all convenient speed. And it is further ordered, that the question of costs, and all further directions, be reserved until the report shall come in. *Souverbye v. Arden*, 1 John. Ch. 258-260.

5. DECREE ANNULLING PROCEEDINGS UNDER ONE PETITION IN INSOLVENCY, AND DIRECTING A WARRANT TO BE ISSUED ON ANOTHER.

E—, ss. }
S. J. C. }

G. T. L. et al. v. G. F. C. et al.

This cause came on to be heard upon the pleadings and proofs in the cause, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed by the Court,

* That the warrant issued by the Hon. G. F. C., Judge of Probate and Insolvency in and for said county of E., on the petition of B. P. W., described in the petition in this cause and all the subsequent proceedings on said petition of said B. P. W. and all proceedings on said warrant be and the same are hereby vacated, annulled, and made of no effect, and the injunctions issued in this cause are hereby made perpetual, and said petition of said B. P. W. is hereby dismissed. * 2284

It is further ordered, adjudged, and decreed, that the order or decree of said Judge dismissing the petition of G. T. L., described in the petition in this cause, in which petition so dismissed said G. T. L. represented said B. P. W. and himself, said G. T. L. and W. R. W. to be general partners under the firm of W. and L., and prayed that a warrant in insolvency might be issued for taking possession of their estate, and that such further proceedings might be had in the premises as the law in such cases prescribed, be, and the same is, hereby reversed and annulled, and said Judge is hereby commanded and directed to issue forthwith upon said petition of said Lancaster, and in pursuance of the prayer thereof, a warrant in insolvency in due form under the hand of said Judge and the seal of his Court against said W. L. and W. as general partners, composing the firm of W. and L., as insolvent debtors, and against their joint and separate estates, and to do all such other acts,

and direct all such further proceedings in the case as the insolvent laws in such cases prescribe.

And it is further ordered and decreed, that an attested copy of this decree be transmitted to the said Judge for his government and direction.

And it is further ordered, that this case be reserved for the further consideration and decree of this Court, upon the question of costs to be allowed to the petitioners. *Lancaster v. Choate, 5 Allen, 530.*

By the Court.

Attest, A. H.

By B. and B.,
their Attorneys.

At Chambers in B., May 30, 1863.

It is now ordered, as part of the final decree in the above-entitled cause, that there be allowed the sum of seven hundred and four dollars and seventy-five cents (\$704.75) as costs in these proceedings, to be paid out of the joint estate of said W. and L. by the assignees, who may be hereafter chosen, to the counsel of the petitioning creditors.

2258

PARTICULAR PERSONS.

1. FEMES COVERT.

(a.) *Sale of stock and payment to wife's separate use.*

It is ordered and decreed, that the \$—— (stock) standing, &c., in trust in this cause (the account of, &c.), be sold, and that the money to arise by such sale, and \$—— cash in the —, to the credit of this cause (the like account, &c.), and any interest, &c., be paid to B., the wife of N., for her separate use.

(b.) *Payment to divorced woman.*

The Court doth order that the money to arise by the sale of the said —— be paid to the petitioner K. (*maiden name*), formerly the wife of B., but now unmarried, having been judicially divorced, on her sole receipt.

(c.) *Inquiry, whether any settlement, and if proper, and if not, direction for settlement.*

The Court doth order that it be referred to, &c., to inquire whether (the plaintiff or defendant) A. has made any and what settlement or provision for (the plaintiff or defendant) B., his wife, and the issue of their marriage, or entered into any and what agreement for that purpose; and, if so, whether the same is a fit and proper settlement or provision for the said (plaintiff or defendant) B., and such issue. And if it shall appear that the said (plaintiff or defendant) has not made any such settlement or provision, or that such settlement or provision, if any, is not fit and proper, the Court doth order that a proper settlement, to be made by the said (plaintiff or defendant) A., on, &c., be approved by the, &c. 2 Seton Dec. (Eng. ed. 1862) 665.

(d.) *Share settled by order, without deed — husband bankrupt.¹*

The Court doth order that the residue of the said \$——, &c., be carried over in trust in this cause, "The account of the settlement of the

¹ For form of a decree ordering a maintenance for a wife out of her property, where she was abandoned by her husband, or pre- vented by his ill-treatment from cohabiting with him, see *Diamond v. Magee*, 4 John. Ch. 318, 325-328.

defendant C., the wife of W., and her children;" and the Court doth declare that the, &c., so to be carried over are to be held in trust for the said defendant C. for her life, and during her present cover-

* 2286 ture, * for her separate use, without power of anticipation, and after her decease in trust for all the children of her present marriage who shall attain the age of twenty-one years, or being daughters shall (attain that age or) marry under that age, equally, and if there shall be no such child, and the defendant C. shall survive the said W., her present husband, in trust for her, her executors, administrators, and assigns; but if she shall die in the lifetime of her said husband, without any child, in trust for the defendants P. and D., as the assignees of his estate and effects; and the Court doth order that the interest during the life of the said defendant C., from time to time to accrue due on, &c., so to be carried over be, as the same accrue due, paid to the said defendant C., the wife of the said W., for her separate use, or until further order. 1 Seton Dec. (Eng. ed. 1862) 665, 666, and notes.

(e.) *Decree ordering a trustee under a marriage settlement, of a married woman, who was insane, and whose husband was her guardian, to contribute from the trust property secured to her sole and separate use towards the expense of her support, on bill by the husband.*

The cause having come before the full Court for a final hearing upon the bill, answers, and facts agreed, and the parties, by their respective counsel, having been fully heard, it is ordered and decreed that the said H. D., trustee of the said J. E. D., pay to the said W. W. D., guardian of the said J. E. D., the sum of four hundred dollars, the same to be paid in thirty days after the filing of this decree; and that he afterwards pay to the said W. W. D. the sum of four hundred dollars annually from the time of filing this decree, till the further order of the Court; the same to be paid in equal half-yearly instalments; the said sums to be paid out of the income of the trust property in the hands of the said H. D.

It is further ordered and decreed, that the costs of this suit, and the reasonable charges of counsel, to be approved and allowed by the Court, be paid by said H. D. out of said income.

In default of payment by said H. D. of said sum of four hundred dollars, and the costs and expenses hereinbefore mentioned, according to the terms of this decree, within thirty days as aforesaid, it is ordered that an execution issue for the same in due form of law.

It is further ordered and decreed, that the said W. W. D. apply the several sums as aforesaid, except the said costs and charges, to the support and maintenance of the said J. E. D., so that, in addition to what shall be furnished for her by him out of his private property, she may be supplied with everything that ought reasonably to be provided for her comfort and convenience. Davenport v. Davenport, 5 Allen, 464.

By the Court.

Boston, Jan. 16, 1863.

2260

(Signed)

G. C. W., Clerk

*(f.) *Assignment of dower; commissioners; inquiries.* * 2287

Ellick Powell and Wife v. The Monson and Brimfield Manuf. Co.

This cause came on to be heard at the, &c., on the bill and answer, and was argued by counsel. Whereupon it is ordered, adjudged, and decreed, that the said Ellick and Elizabeth, in her right, have as her dower, of the endowment of R. M., her late husband, now deceased, one just third part of the lands, tenements, and hereditaments herein-after mentioned, exclusive of the increased value of the same, arising from or caused by the buildings erected and improvements made upon said lands and tenements, &c., or any one of them, since the alienation thereof by the said M.; viz., of one certain tract of land, &c., &c.

And it is further ordered and decreed, that the said Ellick and Elizabeth have and recover their reasonable damages by reason of the detention of her dower in the premises, from and after the third day of March, A. D. 1823, when they demanded of the defendants that they should assign and set out to the said Elizabeth her said dower in said lands, tenements, and hereditaments, until the present time. And that the plaintiffs recover of the defendants their legal costs of this suit, to be taxed by the Court. And it is further ordered and decreed, that this bill be dismissed as to all the other lands and tenements mentioned in said bill, and the said Ellick and Elizabeth's claim, in her right of dower in the same, or any or either of them.

And it is further ordered and decreed, that commissioners be appointed to inquire, ascertain, act, and report, as soon as may be, on the matters following, viz., —

1. The several and respective times when the said R. M. alienated the above-described lands, tenements, and hereditaments, and any parcels or undivided parts thereof.

2. The present value of said lands, &c., exclusive of the increased value occasioned by the buildings and improvements on the premises, since the alienation thereof, by the said R. M.; and also the reasonable damages by reason of the detention of her dower in the premises from and after the third day of March, A. D. 1823, to the present time.

3. If the commissioners shall find that one-third part of said lands, &c., can be assigned and set off to said Elizabeth, by metes and bounds, without great prejudice to the same, then, that they proceed to assign and set off to the said Elizabeth one just third part of said lands, &c., exclusive of the increased value thereof, occasioned by the buildings erected, and improvements made thereon since the alienation thereof by said R. M., meaning so much and such part of said lands, &c., as would be equal in value to one just third part thereof at the present time, in case no buildings had been erected or improvements made thereon since the alienation thereof by the said R. M. * 2288

4. If the commissioners shall find that one-third part of said lands, &c., cannot be assigned and set off to said Elizabeth, as aforesaid, to

hold in severalty by metes and bounds, without inconvenience and prejudice to the same, then, that they inquire and ascertain, and report to the Court, the yearly amount and value of the rents, profits, and income of said lands, &c., exclusive of the increased value arising from, and occasioned by, the buildings erected, and improvements made thereon, since the alienation thereof by said R. M., meaning the true yearly amount and value of the rents, profits, and income which the said lands, &c., would now yield, in case no buildings had been erected or improvements made thereon since the alienation thereof by the said R. M. Powell *et ux. v. Monson and Brimfield Manuf. Co.*, 3 Mason C. C. 347.

[*Second decree in the above case.*]

This cause coming on again to be considered upon the report made by the commissioners appointed to assign dower in the premises, two exceptions were taken in behalf of the respondents to said report, viz.: 1. That the commissioners erred in not considering "the mortgage to R. F., of October 21, 1808, in the pleadings mentioned as an alienation by the said R. M., so as to affect the right of his wife to dower." 2. That the commissioners erred in considering "the water-wheel and the main gearing of the factory as real estate." The exceptions were thereupon argued by counsel for both parties. On consideration thereof, and of the premises, it is ordered, adjudged, and decreed by the Court, that the said exceptions be, and they hereby are, overruled; and that the same report do, in these respects, stand confirmed. And further, that the dower therein assigned to the plaintiffs by the commissioners, firstly in their report, upon the ground that they were right in their opinion on the points above excepted to, be, and hereby is, confirmed and assigned to the plaintiffs accordingly; and that the same report do, in all other respects, stand confirmed. And it is further ordered, adjudged, and decreed, that the defendants do deliver possession of the premises so assigned to the plaintiffs accordingly, and do, in all other respects, perform this decree; that the plaintiffs do recover their reasonable costs in the premises, taxed at \$345.75. 3 Mason C. C. 468, 469.

For forms of decrees respecting the liability of the wife's separate estate for her debts by note, and as surety, see 2 Seton Dec. (Eng. ed. 1862) 678, 679.

* 2289 * (g.) *Alimony on a decree of divorce from bed and board; other directions, custody of child.*

"It appearing, from the pleadings and proofs, that the defendant has been guilty of cruel and inhuman treatment of the plaintiff, by repeated acts of personal violence, so as to render it unsafe and improper, under existing circumstances, for her to cohabit with him, or to be under his dominion and control, it is thereupon ordered, &c., that the plaintiff and defendant be separated from bed and board forever, provided, however, that the parties may, at any time hereafter, by their joint and mutual,

free, and voluntary act, apply to the Court for leave to be discharged from this decretal order. And it is hereby declared to be the duty of each of them to live chastely during their separation, and that it will be criminal, and an act void in law, for either of them, during the life of the other, to contract matrimony with any other person. And it is further ordered, &c., that the plaintiff, according to the prayer of her bill, shall be entitled to and be charged with, the custody, care, and education of the infant son of the parties in the pleadings mentioned, provided always, that this order for the custody, care, and education of the said infant may, at any time hereafter, be modified, varied, or annulled, upon sufficient cause shown. And it is further ordered, &c., that the defendant pay to the plaintiff \$200 a year, to be computed from the date of this decree, in half-yearly payments, to be applied towards the support and maintenance of the plaintiff and her son, and that this allowance is to continue until further order, and be subject to variation, as future circumstances may require. And it is further ordered, that the defendant pay to the plaintiff the costs of this suit, to be taxed, and that she have execution thereupon, according to the course and practice of the Court." ⁴ Barrere v. Barrere, 4 John. Ch. 187.

(h.) *Minutes of a decree, charging the separate estate of a married woman with the payment of her debt, and varying former decree.*

"MINUTES. — Vary decree. Declare separate property of Sophia Hine, vested at this present date in her, or in any other person in trust for her, chargeable with the payment of the £225 and interest, and charge the same accordingly. Take account of what is due to the plaintiff. Inquire of what the separate property consists at the present time, and in whom it is vested. Inquire as to rates and taxes on house, and let Fish" (*the trustee, who with the husband were the defendants*) "be at liberty to retain his costs out of the separate property in his hands. Reserve for the consideration. Liberty to apply." Picard v. Hine, L. R. 5 Ch. App. 274, 278.

* 2. INFANTS.

* 2290

Showing cause against decree.

(a.) *Decree nisi against infant.*

And this decree is to be binding on the defendants, the infants, unless they shall respectively, within six months after attaining their respective ages of twenty-one years, on being served with *subpoena* to show cause against this decree, show unto this Court good cause to the contrary. 2 Seton Dec. (Eng. ed. 1862) 685.

(b.) *Another form.*

"And it is further ordered, that the said defendants H. O. H. and S. S. H., respectively do, as and when they shall respectively attain the age of

³ See another form on decree of divorce *& rinculo*, in Miller v. Miller, 6 John. Ch. 91, 93.

twenty-one years, execute, acknowledge, and deliver sufficient deeds of release of the estate in C. Square and near B. Street, to said M. K., his heirs or assigns, and of the said estate in C. Street, to said J. L., his heirs or assigns, unless the said H. O. H. and S. S. H. respectively shall, within six months after they shall have respectively attained said age of twenty-one years [on being served with *subpœna* to show cause against this decree], show unto this Court good cause to the contrary; and in the mean time it is ordered that the said purchasers of said estates, and their respective heirs and assigns, do hold and enjoy the said estates by them respectively purchased, and to them respectively conveyed by said deeds of said Master. *Kelley v. Greenleaf*, 3 Story C. C. 93.

(c.) *Decree absolute against infant.*

Upon motion, &c., by counsel for the plaintiff, who alleged, that the defendant A. attained the age of twenty-one years on the — day of —, and that the said defendant was on the — day of — duly served with a *subpœna* to show cause against the decree made in this cause, dated, &c., as by the affidavit of, &c., filed, &c., appears, and no cause having been shown to the contrary thereof, as by the —'s certificate also appears, and upon reading, &c., this Court doth order that the said decree be made absolute against the said defendant A. 2 Seton Dec. (Eng. ed. 1862) 685.

(d.) *Decree for absolute foreclosure against infant and feme covert, plaintiff paying their costs, and Court deeming it for their benefit.*

And the plaintiff by his counsel offering to pay unto the defendants S. and L. his wife, and G., the infant, their costs of this cause as between solicitor and client, upon an absolute decree of foreclosure being now made as against them; and the * defendant S. by his counsel disclaiming all interest in the estate comprised in the indenture of mortgage in the pleadings mentioned, dated, &c., and consenting to an absolute decree; and counsel for the defendant L., the wife of the said S., and for the defendant G., the infant, not asking for liberty to redeem the mortgaged premises, or for any account of what is due to the plaintiff, the court doth declare that it will be for the benefit of the defendant L., and of the said infant G., to accept the said offer; and doth order that the defendant S., and L., his wife, and the defendant G., the infant, from henceforth stand absolutely debarred and foreclosed, &c.; and that the plaintiff B. pay unto the said defendants respectively their costs of this cause, to be taxed, &c. *Billson v. Scott*, 1856, 2 Seton Dec. (Eng. ed. 1862) 685, 686.

(e.) *Infants declared not bound by decree; accounts; former accounts to be adopted if beneficial.*

This Court doth "declare, that the plaintiffs are entitled to the benefit of the decree dated, &c., and the several proceedings under the same, and subsequent or previous thereto, against all the defendants to

this (*supplemental*) cause, except the infant defendant H., the only son of the defendant J., and the first tenant in tail *in esse* under the testator's will; and doth also declare that the said decree and orders, and the accounts taken under the same, are not binding on the said defendant, the infant." — Usual accounts of personality, and inquiries as to realty, any accounts settled in testator's lifetime not to be disturbed. — "And if it shall appear to be for the benefit of the infant defendant H. to adopt any of the accounts already taken under the decree and orders in the original cause, such accounts are to be adopted to such extent, or in such respects as shall appear to be for the benefit of the said infant defendant." — And this decree is to be without prejudice as between the plaintiff and all the defendants, except the said infant, to any of the decrees and orders, proceedings, and arrangements, made prior to the date hereof. *Adjourn, &c.* 2 Seton Dec. (Eng. ed. 1862) 690, 691; *Baillie v. Jackson*, 10 Sim. 167.

Directions as to shares and income.

(f.) *Inquiries as to advances, and maintenance, and shares.*

The Court doth order that it be referred to, &c., to make the following inquiries, that is to say, "1. An inquiry, whether the testator in his lifetime gave, advanced, or settled in, for, or upon any, and which of his children, any sum or sums of money, or other property; and if so, what was the amount or value thereof; 2. An inquiry, whether any * and what payments, appropriations, or advances have been made by the executors of the will of the testator, since his death, to or on account of the children of the testator, or any, or which of them, in respect of their shares of his residuary estate, or otherwise; 3. An inquiry of what the residuary, personal, and real estate of the testator consisted." — 4. An inquiry, as to allowance for past and future maintenance and advancement in life of the children of the testator, or any of them, and if so, to whom the same is due. 2 Seton Dec. (Eng. ed. 1862) 698.

Guardian, maintenance, and education.

(g.) *Guardian of person and maintenance.*

(This, &c.) appoint B., of, &c., guardian of the person of A., the infant, during his minority, or until further order; and it is ordered by the Court that the sum of \$ — a year be allowed for the maintenance and education of the said infant for the time past, from the — day of —, the time of the death of C., his father, and for the time to come during his minority; and be paid to the said B., his guardian, during his minority, or until further order, by equal half-yearly payments, of \$ — each, on the — day of —, and the — day of —, in each year, the first of such payments to be made on the — day of —, out of the interest from time to time to accrue due on the &c.

Standing, &c. [or, by the Receiver, appointed in this cause, out of the rents and profits of the estates of said A., the infant]; and let such payments be allowed the said Receiver from time to time in passing his accounts. 2 Seton Dec. (Eng. ed. 1862) 700.

(h.) *Order for increase of maintenance.*

It is ordered that the sum of \$ — a year be allowed in addition to the said sum of \$ — a year, allowed by the order dated, &c., making together the sum of \$ — a year, for the maintenance and education of A., the infant, for the time to come during his minority [or, such increase allowance to commence on, or, as from]; and to be paid to, &c.¹ [as in next form above].

(i.) *Devise of maintenance of lunatic out of profits insufficient; sale ordered.*

It is declared, that the estate in the pleadings mentioned is charged with the comfortable and reasonable maintenance of *Nelly S.*; and that, if the farm will not, upon lease, yield sufficient for that purpose,

* 2293 * the same may and ought to be sold, and the proceeds applied for her support; and that a Master be directed to inquire, and report, what annual sum is requisite for the comfortable and reasonable maintenance of *Nelly S.*, and what is the net value of the yearly rents and profits of the estate, as the same now exists, and may be rented. Schermerhorne v. Schermerhorne, 6 John. Ch. 74.

Custody of infants.

(j.) *Custody of infants committed to mother; guardians; provision; father excluded except at stated time.*

On petition of the mother and her brother and next friend, and of the infants by the same next friend. It is ordered that "M. and J., the infants, remain in the care and custody of the petitioner E., their mother." — Appoint petitioner E. and F. (*next friend*) to act in the nature of guardians to the infants till further order. — And it is ordered, that the petitioner E. have the charge and superintendence of the education of the said infants, and said petitioner E. and the said F., by their counsel, undertaking that, until the further order of this Court, they will duly and properly provide for the care, maintenance and education of the said infants. And it is further ordered that "Y., the father of the said infants, have access not oftener than once in three months, to see the said infants, at his own expense, in the presence of such person as the said E. may appoint, within one mile of their residence in England, for the time being." Liberty to apply.¹ 2 Seton Dec. (Eng. ed. 1862) 714.

¹ For inquiries in regard to ability of father to maintain infant, see Kekewich v. Langston, 11 Sim. 291, 305. Payment of infant's maintenance to father, see Bateman v. Foster, 1 Col.

C. C. 127; Meacher v. Young, 2 My. & K. 490. To mother, see Fentiman v. Fentiman, 13 Sim. 171.

¹ For orders respecting the care and custody

(k.) *Order for habeas on motion.*

It is ordered that a writ of *habeas corpus* issue, directing (directed to) the defendants B. and M. his wife to bring into this Court the plaintiffs M., F., and J., the infant children of J. L., at the sitting of this Court, at, &c., on the — day of —. 2 Seton Dec. (Eng. ed. 1862) 718.²

Leave to take infant out of jurisdiction.³(l.) *Residence abroad.*

The Court doth order that the petitioner, the father of the infant plaintiffs, be at liberty to remove the said infants with him to —, or to any other parts and places beyond the seas, and out of the jurisdiction * of this Court, in which he shall, in the execution * 2294 of his duty, be ordered or find it necessary to reside, there to remain with the petitioner if he shall so think fit; the petitioner, by his said petition (counsel), undertaking to bring the said infants or such of them as shall then be living, back with him on his return to this country, on the fulfilment of his mission in the petition mentioned, unless the petitioner shall in the mean time, from any unforeseen circumstance, deem it advisable to send them, or any of them, back to this country; but the petitioner is half-yearly to transmit, properly vouched, to be laid before the Court, the plan of tuition and education for each of the said infants, actually adopted and in practice at the time of such half-yearly return, and specifying particularly where and with whom they reside.¹ Jackson *v.* Hankey, Jacob, 265 n.

3. EXECUTORS AND TRUSTEES.

Accounts.(a.) *Against executors of sole executor.*

It is ordered that it be referred to, &c., to take an account of the personal estate, not specifically bequeathed, of A.; the testator in the pleadings named, come to the hands of (received by) B., deceased, the sole executor of his will, and of (by) the defendants C. and D. [or, C., D., and E.] the executors of the will of the said B., since his decease, or either [or, any] of them, or of (by) any other person or persons, by the order, or for the use of the said B., or of the said defendants, or either [or, any] of them; and it is ordered and decreed that what, on taking the said account, shall appear to be due from the defendants,

of children, see *Re Bartlett*, 2 Col. 661; *Hope r. Hope*, 4 DeG. M. & G. 355; *Wellesley v. Beaufort*, 2 Russ. 44.

² For form of order by the Court where infant brought up on *habeas*, see *Matter of Wollstonecraft*, 4 John. Ch. 83.

³ Although the Court will, under special circumstances, allow an infant ward to go out

of the jurisdiction, yet it will not compel the removal of an infant ward out of the jurisdiction. *Dawson v. Joy*, 3 De G. M. & G. 764.

¹ For orders for maintenance of infants out of the jurisdiction, see *Stephens v. James*, 1 My. & K. 627; *Wyndham v. Ennismore*, 1 Keen, 468; *De Weever v. Rochport*, 6 Beav. 391.

C. and D. [*or, C., D., and E.*], be answered by them personally, and what shall appear to be due from the estate of the said B., deceased, be answered by the defendants C. and D. [*or, C., D., and E.*], as such executors, they having admitted assets of the said B., for that purpose ; [*or, if assets not admitted*, out of his assets in the course of administration ; and in case the said defendants shall not admit assets of the said B. for that purpose, then it is ordered that an account be taken of the personal estate of the said B., come to the hands of (received by) the defendants C. and D., *or, C., D., and E., or either, or, any of them, or of (by) any other person or persons, by the order, or for the use of the said defendants, or either, or any of them.*]² 2 Seton Dec.

* 2295 (Eng. *ed. 1862) 735. For form of supplemental decree against administrator of executrix and administrator *de bonis non*, see Ib. 736.

Breach of trust.

(b.) *Investment declared improper.*

Decree to perform will, and administer testator's estate : "And it is declared, that the investment of any part of the personal estate of the testator by the defendant C., either by way of loan upon the deposit of, &c., &c. [*foreign or other securities*], was an improper investment; and in taking the accounts of the personal estate of the testator not specifically bequeathed, come to the hands of the defendant C., regard is to be had to the foregoing declaration." Knott v. Cottee, 16 Beav. 77; 2 Seton Dec. (Eng. ed. 1862) 748.

(c.) *Improper investment made good by instalments, without prejudice to appeal; security to be realized.*

It is declared by the Court, that the investment of the sum of \$7320, in the pleadings mentioned, on the security of the estates comprised in the indenture of, &c., in the pleadings mentioned, was, so far as regards the plaintiff, a breach of trust on the part of the defendant A. Directions by arrangement for defendant A. to make good plaintiff's share of fraud, with interest at — per cent by instalment. "And in default of such payments as aforesaid, or any of them, and in case the mortgage security in the pleadings mentioned shall not have been previously realized, it is ordered that the same be realized ; and, for that purpose, it is ordered, that the plaintiff, after any such default, be at liberty to make such applications as she may be advised to the commissioners for sale of, &c.; and that the defendant A. and the plaintiff be at liberty to bid at the sale ; and it is declared by the Court, that in case of any such default, the plaintiff, out of such part of the money arising from any

² A creditor may come into a Court of Chancery against an executor or administrator, for a discovery and distribution of assets. Thompson v. Brown, 4 John. Ch. 619. A very particular and extended form of decree for account is reported in this case.

sale, as shall bear to the whole produce of the sale the proportion of \$3965, to \$7320, is entitled to be paid the amount then due to her." — Defendant A. to pay plaintiff's costs of suit, to be taxed. — "And by consent of the plaintiff (by her counsel), any consent or admission on the part of the defendant A., or other matter herein contained, is not to prejudice or affect any right of appeal by or on the part of the defendant A." 2 Seton Dec. 748, 749.

(d.) *Debentures fraudulently disposed of by trustee without concurrence of co-trustee, to be deposited in Court by alleged purchaser; account of interest.*

It is ordered that "the defendant L. (*purchaser*) on or before, &c., deposit in a tin box, under lock and key, in the presence of plaintiff's solicitor, Mr. —, the two debentures of the — Railway Co., and the * remaining coupons attached or belonging thereto, numbered respectively, &c., in the bill mentioned ; and that such box be indorsed, 'In Chancery, G. v. P., Securities'; and that the defendant L., on or before, &c., deposit such box in the bank, &c., to the credit of this cause, subject, &c." Account of interest on the said debentures received by defendants P., R., and L. [*in whose hands the debentures had been*], or any of them, and they to pay to the plaintiff what shall be found due from them respectively ; defendants, including D. (*fraudulent trustee*), to pay plaintiff's cost of suit ; defendant L. only so far as they are increased by making him defendant. — Liberty to apply. 2 Seton Dec. (Eng. ed. 1862) 749.

(e.) *Inquiry as to wilful default; bankrupt or insolvent trustee.*

It is ordered that it be referred to, &c., to take the account and make the inquiry following, that is to say : 1. An account of all such of the moneys or funds comprised in the indenture dated, &c., in the pleadings mentioned, or from time to time subject to the trusts thereof, as have been procured or received by the defendant C. (*bankrupt or insolvent debtor*), or by any person, &c., or which, without his wilful (neglect and) default, have been so possessed or received, and of his dealings with and investments of such moneys or funds, and of his application and disposition thereof, and of the dividends, interest, and annual proceeds thereof ; 2. An inquiry, whether anything, and what, is due from the defendant or his estate in respect thereof. Adjourn, &c. 2 Seton Dec. 751.

(f.) *Further order for leave to prove the balance.*

It is ordered that the plaintiff be at liberty to go in and prove against the estate of the defendant C. the bankrupt [or, the insolvent debtor],

under the adjudication in bankruptcy [or, proceedings in insolvency] against the said defendant for the sum of \$——, the balance appearing by the Master's report, dated, &c., to be due from him or his estate in respect of the money or funds comprised in the indenture dated, &c., or at any time subject to the trusts thereof, and also for the dividends, interest, and annual proceeds thereof, and for the plaintiff's costs in this cause, to be taxed, &c.; but so as not to disturb any dividend already declared. Liberty to apply. 2 Seton Dec. (Eng. ed. 1862) 751.

(g.) Account and inquiry as to the trust funds under two settlements.¹

It is ordered that "the decree, dated, &c., be varied; and it is further ordered and decreed that it be referred to, &c., to take the following account and make the following inquiry, that is to say: 1. An *2297 account * of the trust funds and property come to the hands of the plaintiff as trustee under each of the indentures of settlement, dated respectively, &c., in the pleadings mentioned, either solely or jointly with his co-trustee or co-trustees, under the said indentures respectively; 2. An inquiry, whether the said trust funds and property are now in the possession of the trustees respectively, and whether in the same state of investment as at the time when such trust funds and property came into the hands of the said trustees, or in any other and what state of investment; but such account and inquiry respectively are not to extend to the income of the said trust funds and property." So much of the decree as directs the taxation and payment and apportionment of costs to be reversed; reserve the consideration of the costs of suit, and of the account and inquiry hereby directed; costs of appeal to be costs in the cause. Adjourn, &c. 2 Seton Dec. (Eng. ed. 1862) 751.

(h.) Inquiry if executors have recovered moneys.

It is ordered that it be referred to, &c., to make an inquiry, what part of the personal estate comprised in and assigned by the indenture of settlement dated, &c., in, &c., came to the hands of S. and R., the trustees of the said settlement; and what funds were in the hands of the said trustees at the death of E., the testatrix in, &c., and what has become of all such funds as came to the hands of the said trustees, and whether the same or any, and which of them, might have been recovered from the said trustee by M. and T., the executors of the said E., after the decease of the said E.¹ 2 Seton Dec. (Eng. ed. 1862) 752.

¹ For a form of decree vacating a purchase of an estate, by the trustee for selling and ordering a resale, &c. see *Davoue v. Fanning*, 2 John. Ch. 271.

¹ A trustee who suffers funds to pass improperly into the hands of his co-trustee, is chargeable for any loss arising from such negligence or abuse of trust. *Mumford v. Murray*,

6 John. Ch. 1. So a defendant, who suffered moneys received under an order in favor of himself and the plaintiff, as partners, to be blended with moneys received by him under a subsequent *trust deed* to him and another, to pass into the hands of his co-trustee, was held accountable to the plaintiff, notwithstanding the plaintiff, as one of the *cestui que trusts*, had

*Charging with interest.**(i.) Inquiry as to employment of balances.*

It is ordered that it be referred to, &c., to inquire and report "how and in what manner the personal estate of the testator possessed by * (come to the hands of) the defendant C., has been employed * 2298 by him, and what balances in respect thereof have remained in his hands, and during what time respectively."

(j.) Directions for annual rests and compound interest.

Accounts of personal estate; personality not specifically bequeathed to be applied to pay debts and legacies. "And let the balance of the residuary personal estate of the testator in the hands of the defendant W. at the death of C., in the pleadings named, be ascertained; and let annual rests be made of the clear balance of such personal estate in the hands of the defendant W. since the death of the said C.; and let interest be computed on the balance which shall be ascertained as aforesaid, at the rate of — per cent per annum, and in making such annual rests (except the first) the interest of each preceding balance is to be included in the balance then stated, so as to charge the said defendant with compound interest thereon." Account of rents and profits since the death of the said C. received by defendants W. and S., &c.; and in taking such account, annual rests are to be made of the clear balance of such rents and profits in the hands of the defendant W.; and let interest be computed on such respective balances at the rate of — per cent per annum; and in making such annual rests, except the first, the interest of each preceding balance is to be included in the balance then stated, so as to charge the said defendant W. with compound interest thereon. *Cotham v. West*, 1 Beav. 381. 2 Seton Dec. (Eng. ed. 1862) 762.

*Costs and expenses.**(k.) Costs, charges, and expenses, beyond costs of suit.*

It is ordered that it be referred to, &c., to tax the costs of the plaintiffs and defendants (all parties) of this cause, the costs of the defend-

joined in a discharge of such co-trustee, but without a knowledge of the fact of the first money being so blended with moneys received under the trust deed. *Mumford v. Murray, supra*. A trustee who minglesthe trust money with his own, and uses it as his own, must pay *interest*. *Mumford v. Murray, supra*. See this case for the outlines of a *decree* involving a consideration of the above points. Where an administrator of a deceased partner, without applying to the Court for its direction, permitted the surviving partner to sell the joint stock in the usual course of trade, for the joint benefit of himself and the intestate's estate,

and put into the hands of such surviving partner, assets which the administrator had in his own hands, and under his own control to trade with, he was held answerable for the loss. *Thompson v. Brown*, 4 John. Ch. 619. See form of decree in this case. Where a trustee, though called on for that purpose, refused to exhibit to referees appointed by the Court, by consent of parties, an account of the rents and profits of certain parts of the trust estate, he was held chargeable with what, in the opinion of the referees, such parts of the estate would reasonably have produced. *Green v. Winter*, 1 John. Ch. 26, and Form of Decree, pp. 42-44.

ants B. & C., the executors of the will of A., the testator in the pleadings named [*or*, the trustees of the will of, &c., *or*, of the indenture, dated, &c., *or*, of the legacy, &c., in the pleadings, &c., mentioned] as between solicitor and client [*if so, add*, incurred subsequent to the last taxation], including in such taxation any costs, charges, and expenses, properly incurred by them, relating to the administration of the testator's estate [*or*, the execution of the trusts of the testator's will, *or* the said indenture, *or* the said legacy, *or* as such executors *or* trustees] beyond their costs of this cause; if there has been any former taxation, or any charges, &c., have been allowed in the accounts, add, and not already taxed and allowed.

* 2299

(l.) * *Same to be raised by the trustees.*

And let the said costs, and costs and charges, and expenses, when so taxed, be raised and paid by the said defendants, the trustees, by sale of sufficient part of the, &c., standing in the names, &c. 2 Seton, Dec. 767.

(m.) *Inquiry as to costs, charges, and expenses.*

And it is ordered that the Taxing Master do inquire whether the plaintiff [*or*, defendant] A. has properly incurred any and what costs, charges, and expenses relating to the administration, &c., beyond the costs of this cause (suit); and if so, let him tax and include the same in the costs of the said plaintiff [*or*, defendant] hereinbefore directed to be taxed.

(n.) *Decree for costs in a suit by trustee to obtain instructions ; as between solicitor and client ; charging it on different funds.¹*

"It is further ordered, adjudged, and decreed, that all the costs in this suit, including counsel fees, shall be paid out of the property in controversy in the cause, and as the different parties having different interests therein have waived all right of appeal from this decree, and have seen and examined the charges for counsel fees and services made and presented by the respective counsel, and made no objection thereto, and have agreed as to the mode of apportioning the costs and charges upon the property in controversy, it is further ordered, by the consent of the parties, there be paid to S. E. S., Esquire, as solicitor and counsel for the plaintiff, for costs and counsel fees, nine hundred sixty dollars twenty-two cents; to C. C., Esquire, as solicitor and counsel for W. C. J., for costs and counsel fees, one thousand and seventy-nine dollars thirty-two cents; to R. S. S., Esquire, as guardian *ad litem* of J. Q. A. J., for costs, counsel fees, and services for other defendants, nine hundred and twenty-nine dollars thirty-two cents; to F. E. P., Esquire, as guardian *ad litem* and counsel for M. A. J. and L. C. J., for costs and counsel fees, three hundred and four dollars thirty-two cents; to R. H. D.,

¹ See 2 Seton Dec. (Eng. 1862) 162, 163, 164.

Junior, Esquire, as counsel for M. C. A., for costs and counsel fees, two hundred and eleven dollars and eighty-two cents; to C. W. T., Esquire, as solicitor for M. C. A., one hundred dollars; amounting in the whole to the sum of three thousand five hundred and eighty-five dollars; and that the said plaintiff, when he pays the said costs, shall pay out of the following funds their respective shares of said costs, as follows, to wit, from the capital of the trust funds held by him under the eighth clause of said will, seventeen hundred and twenty-three dollars ninety cents; from the interest of the *same, two hundred and forty-eight dollars twenty-five cents; from the interest of said twenty thousand dollars bequeathed by the tenth clause of said will, one thousand and one dollars sixty-five cents; from the proceeds of real estate, being stocks in Massachusetts, held by plaintiff as trustee under the thirteenth clause of said will, four hundred nineteen dollars seventy cents; from the income of the same sixty dollars, forty-six cents; from the annuity payable to said M. C. A., one hundred and thirty-one dollars five cents. Adams v. Johnson, C. C. U. S. Mass., Oct. 7, 1861. In Equity.

By the Court.

— — —, Clerk.

Appointing new trustees.

(o.) *Decrees to appoint new trustees.*

The defendant B., by his answer [or, counsel], declining to act in the trusts of the testator's will [or, vested in him by the articles of settlement, or indenture], dated the — day of — in the pleadings mentioned, and desiring to be discharged therefrom (this Court doth hereby) appoint D. and E. [or, let two or more proper persons be appointed] trustees of the said will [or, articles, &c.] in his place [jointly with C., the continuing trustee]; and let the defendant B. [and C.] convey [assign and transfer] the trust estate [funds, property, and securities] vested in him [or, them] by the said will [or, articles, &c.], and the £— standing in the name of, &c., in the books of the Bank of —, as in the pleadings mentioned or the residue thereof after payment of the costs, hereinafter mentioned, so as to vest the same in the said D. and E. [or, the trustees so to be appointed, if so, jointly with the said C.], upon the trusts mentioned in [or, declared by] the said will [or, articles, &c.], or such of them as are now subsisting or capable of taking effect [or, subject to the trusts mentioned in the said will dated, &c., or, articles, &c.], concerning the same, &c. [*If stock, add, and they are to declare the trusts thereof accordingly;*] and let such conveyance [or assignment, or declaration] be settled by the Judge [or Court, or Master]. [*If no infants or married women, in case the parties differ; If deeds in defendants' hands,* and let the defendant B. deliver to such new (and continuing) trustees upon oath, all deeds and writings in his custody or power, relating to the said trust estates, &c.; *If trustee to have his costs, tax the defendant B. his costs of this cause (suit), as between solicitor and client;* and let defendant

B. [and the said C.] be at liberty to raise and retain the same out of the said trust estate, or, funds, &c.] Liberty to apply. 2 Seton Dec. (Eng. ed. 1862) 778.

* 2301 * (p.) *Decree declaring construction of will; parties entitled under costs, &c.*

Supreme Judicial Court.

BRISTOL, ss.

W. V., in Equity, v. J. B. and others.

At Chambers in Boston, March 8, 1869.

This cause came on to be heard at Boston on the fourteenth day of January, A. D. 1869, by adjournment from the October term of this Court at Taunton, within and for our county of Bristol, in the year 1868, upon bill and answers, and was argued by counsel, and thereupon, after due consideration, this Court is of opinion, and doth declare that the provisions in the eighth article of the will of said W. V. have reference only to the bequests to the descendants of the testator's sister A. W.; and as the contingency on which the bequest of the residue to the descendants of said A. W. depended did not happen, the questions presented in this suit are not affected by that article; that by the third clause of the fourth article of the will, on the death of the testator's grandson, W. V., Jr., one-half of the whole fund in the hands of the trustees vested in the children of the grandson, of whom the plaintiff is one; that on the death of C. E. V., one of the children of said grandson, the share of said C. E. V. went to his administrator, to be disposed of according to the Statute of Distributions, and that the plaintiff is not entitled by this suit to recover of the trustees any portion of the estate of said C. E. V.; that after the death of the testator's grandson, the father of the plaintiff, the residuary fund ought to be divided into two equal parts, one-half part to be kept and managed by the trustees, for the benefit of the testator's granddaughter J. V. F., so far as the will allows, that is to an annual amount not exceeding one-eighth of the income of that half, and the rest of such income to be invested with the principal, for the ultimate benefit of her issue, if they should become entitled to it; that the other half ought to be divided into five equal parts, one of which said fifth parts to be for each of the children of the testator's grandson, the father of the plaintiff, vesting in said children, in severalty, but to be retained and managed by the trustees until said children respectively come of age, or die, and subject under the will to different disbursements of income, according to the discretion of the trustees for their support during their minority; that by the construction of the last two clauses of the fifth article of the will, the plaintiff, upon arriving at the age of twenty-one years, is entitled to receive from the trustees a conveyance of one-fifth of one-half of the residuary estate remaining in their hands, upon an account to be settled in the Probate Court, after first deducting the costs and expenses of all parties to this suit.

It is therefore ordered, adjudged, and decreed, that the trustees J. B. and P. D. B. do pay out of the residuary trust fund in their hands

* to the several parties to this suit, their costs and expenses of * 2302 this suit, as agreed upon by all parties, as follows; to wit, to B. F. T., of counsel for the plaintiff, W. V., the sum of twenty-five hundred and seventy-five dollars; to R. O., solicitor for the plaintiff, the sum of five hundred dollars; to E. C. A., solicitor and counsel for the trustees J. B. and P. D. B., the sum of one thousand and eighteen dollars; to P. H. S., solicitor and of counsel for J. V. F., J. A. F., J. V. T., C. B. T. and J. McL., guardian of H. A. F. and J. E. F., the sum of eleven hundred and fifty dollars; to J. C. B., solicitor and counsel for Jeff. B. V., Jessie B. V. and E. E. V., the sum to be allowed by the Probate Court in his guardian's account; and to W. W. C., solicitor and of counsel for M. A. R. and W. S. R., the sum of five hundred dollars; and that the trustees pay the fees of the clerk of Court taxed at \$120.20; and that upon their account being rendered to, and allowed by, the Probate Court for the county of Bristol (in case the parties do not otherwise agree upon the matter) the trustees J. B. and P. D. B. do, and they hereby are required and directed to, pay and convey to the plaintiff W. V. one-fifth of one-half of the said residuary trust fund and estate remaining in their hands, after deducting said costs and expenses of suit and such reasonable allowances as may be made to the said trustees in said account; and said trustees are required forthwith to make return or report of the manner in which they shall have executed this order and decree to this Court for approbation and confirmation of their doings thereon, and the cause is to stand continued until the coming in of such their return or report.

E. R. H., J. S. J. C.

4. SOLICITORS.

(a.) *Order nisi to strike solicitor off the roll for misconduct.*

And upon the matters appearing to this Court in the evidence in this cause, It is ordered, that T., one of the solicitors of this Court, be struck off the roll of solicitors of this Court, unless he shall on the — day of — show unto this Court good cause to the contrary.

(b.) *Order absolute ; cause not shown or disallowed.*

Whereas by an order, &c. [Recite order nisi, and order to substitute service on defendant's solicitor]. Now upon motion, &c., of counsel for the plaintiffs who alleged that the said defendant T. hath been duly served with the said order, dated, &c., as by affidavit of — filed, &c., appears, and upon reading the said order and affidavit, and no cause having been shown this day to the contrary, this Court doth order that the name of the said defendant T. be struck off the roll of the solicitors of this Court. 2 Seton Dec. (Eng. ed. 1862) 865, 866.

*CHAPTER XXI.

SUMMARY AND ANCILLARY RELIEF.

SECTION I.

INJUNCTIONS.

I. FORM OF ORDER.

(a.) *Injunction on notice, or ex parte, on undertaking as to damage.*

UPON motion, &c., by counsel for the plaintiff, and upon hearing counsel for the defendant [or, reading and affidavit of notice of his motion to the defendant, or if moved *ex parte* before the defendant has appeared to the bill, the clerk's certificate of the filing of the plaintiff's bill in this cause on the — day of —]. [*Enter affidavit in support and in opposition, if any; and if ex parte, add,* and the plaintiff by his counsel, undertaking to abide by any order this Court may make as to damages, in case this Court should hereafter be of opinion that the defendant shall have sustained any, by reason of this order, which the plaintiff ought to pay, *If so,* and also undertaking to accept short notice of motion to dissolve the injunction hereby awarded], This Court doth order, that an injunction be awarded to restrain the defendant A., his servants, workmen, and agents, from, &c.; until the hearing of this cause, or until the further order of this Court.

(b.) *Ex parte interim order.*

Usual undertaking as to damage [Form above]. Let the defendant, his servants, workmen, and agents be restrained from, &c.; until after the — day of —, or until the further order of this Court [*If so,* and let the plaintiff be at liberty to serve the defendant with a notice of motion for the — day of —, for an injunction in this cause.]

(c.) *Ex parte injunction.*

Upon the application of the plaintiffs, and upon reading an affidavit of, &c. [*Enter evidence*]; and the plaintiffs, by their solicitors, having undertaken, &c. [Form above], and having signed, &c., to that effect, accordingly this Court doth order that an injunction be awarded, &c.
2 Seton Dec. (Eng. ed. 1862) 867.

* (d.) *Another form, provisional. (Mass.)* * 2304

At Chambers, Boston, May 14, 1862.

Let an injunction issue in conformity with the prayer of the bill, to continue until the further order of the Court or some justice thereof.

E. R. H.,
J. S. J. C.

(e.) *Inquiry as to damages, to be paid according to undertaking.*

Upon motion for a decree, &c. — “This Court doth declare, that the plaintiff is not entitled to any relief claimed by his said bill against the defendants, or any of them; and upon the plaintiff's undertaking contained in the order, dated, &c., to pay any sum which this Court might direct by way of damages to the said defendants, by reason of the sale of the book in the said bill mentioned, called, &c., having been stopped, pursuant to the undertaking given, by the said defendants to that effect, on the — day of —, it is ordered that it be referred to, &c., to inquire and report what damages have been sustained by the defendants by reason of the sale of the said book having been so stopped; and that the plaintiff N., within one month from the date of the Master's report, to be made pursuant to this order, pay the amount which shall be thereby found due (for damages in respect of the matters aforesaid) to the defendants R. and W., &c.” — And thereupon recognizance entered into to answer damages to be vacated; and all further proceedings to be stayed. Plaintiff to pay defendants' costs of suit and of motion for injunction.¹ Napier v. Routledge (1859), 2 Seton Dec. (Eng. ed. 1862) 868.

2. STAYING PROCEEDINGS IN OTHER COURTS.

(a.) *Staying present and future action.*

This Court doth order that an injunction be awarded to restrain the defendant T., his attorneys and agents, from further prosecuting the action commenced (by the defendant) against the plaintiff (in the — Court, &c.), as in the bill mentioned, to recover the amount of principal, interest, and costs secured by the indenture dated, &c., in the plaintiff's bill mentioned; and from commencing (or prosecuting) any other action at Law (or taking any other proceeding) against the plaintiff for the recovery of such principal, interest and costs, or any part thereof, until the hearing of this cause, or until the further order of this Court. 2 Seton Dec. (Eng. ed. 1862) 874, 875.

¹ In Merryfield v. Jones, 2 Curtis, 306, it was decided that a Court of Equity cannot order the plaintiff and his sureties on an injunction bond, to pay the damages sustained by reason of the injunction. The defendant must resort to an action on the bond.

* 2305 * (b.) *Substance of final decree; injunction perpetual.*

"That the injunction heretofore issued in this cause be made perpetual, and that the said defendant H. be, and he hereby is, perpetually enjoined from prosecuting the suit at Law now pending for the recovery of the said plaintiff's law library, or any other action at Law for the same cause; and that said H. is directed to discontinue the suit now pending, as aforesaid, provided that neither party shall be entitled to recover costs in said suit at Law against the other. And said defendant is further ordered and decreed to deliver the said law library of the plaintiff to him, free of any charge or incumbrance created by him thereupon. And it is further decreed that in this cause neither party shall have or recover any costs of the other."¹

(c.) *Leave to proceed with action, but execution stayed.*

It is ordered, that the defendant be at liberty to proceed with the action at Law commenced by him against the plaintiff (in — Court, &c.), respecting the matters in the plaintiff's bill mentioned; and in case the defendant shall obtain judgment in the said action, he is not to sue out execution thereon, or take any other proceedings thereunder, until the further order of this Court. Liberty to apply. Costs of application to be costs in cause. 2 Seton Dec. (Eng. ed. 1862) 875.

(d.) *To stay sale and withdraw, where execution issued after notice of decree.*

It is ordered that, &c., to restrain H. from selling or disposing of any part of the property and effects of and belonging to, or forming part of, the estate of V., the intestate, taken in execution by the sheriff of M., under and by virtue of the writ of *fi. fa.*, sued out in the action in the Court of, &c., wherein the said H. is plaintiff, and the defendant V., as administratrix of the said estate, is defendant, and from taking any further proceedings in the said action, or under the said execution; and it is ordered that the said H. withdraw from the possession of the property and effects of the said intestate so taken in execution, as aforesaid. 2 Seton Dec. (Eng. ed. 1862) 883.

3. WASTE, TRESPASS, AND NUISANCE.

(a.) *Injunction to stay felling ornamental timber and other waste.*

This Court doth order that an injunction be awarded to restrain the defendant D., her agents, servants, and workmen, from cutting down *any timber or other trees growing on the estate in the plaintiff's bill mentioned, which are planted or growing thereon for the protection or shelter of the several mansion-houses belonging to the said estate, or for the ornament of the said houses, or which grow in

¹ Ross v. Harper, 99 Mass. 175.

lines, walks, vistas, or otherwise, for the ornament of the said houses, or of the gardens or parks or pleasure grounds thereunto belonging; and it is further ordered, that the injunction do also extend to restrain the defendant D., her servants, workmen, and agents, from cutting down any timber or other trees, except at seasonable times, and in a husband-like manner; and likewise from cutting down saplings and young trees, not fit to be cut as and for the purposes of timber; until, &c. Chamberlayne *v.* Dummer, 1 B. C. C. 166; 2 Seton Dec. (Eng. ed. 1862) 891.

(b.) The like ; and trees to intercept view ; and other waste.

"Or which were planted for the purpose of intercepting the view of objects intended to be kept out of sight." — "And also from committing any other spoil or destruction on the said estate."

(c.) The like ; and trees to shade or shelter.

"Standing or growing for ornament, shade, or shelter of the mansion and buildings at, &c., or any other houses or buildings on the settled estates."

(d.) Injunction and inquiry as to timber cut by life-tenant, sans waste, except, &c.

Bill by remainder-man against assignee of life estate, without impeachment of, or for any manner of waste, save and except spoil or destruction, or voluntary or permissive waste, or suffering houses and buildings to go to decay, and not repairing the same.

This Court doth declare, that according to the true construction of the indenture dated, &c., in, &c., the defendant S., as assignee of the life-estate of V., is entitled to cut all such timber and wood growing on the estates in question, not being trees or wood planted or left standing or growing there for the protection or shelter of the mansion-house, called, &c., in the bill mentioned, or for the ornament of the said house, or which grow in lines, walks, or otherwise for the ornament of the said house, or of the gardens, or park, or pleasure grounds thereunto belonging, or as owner in fee-simple, having regard to his present interest, and also to the permanent advantage of the estate, might cut in a due course of management; and the defendant S., by his counsel, undertaking after the present month to give to the plaintiff notice, a fortnight previously to his cutting trees or wood, specifying the trees or wood which he intends to cut." — Injunction to stay defendant S., his servants, &c., "from cutting any trees or wood growing upon the * said estates or any part thereof, being trees or wood planted, * 2307 &c., [see above] thereunto belonging, or being such trees or wood as an owner in fee-simple, having regard to his present interest and also to the permanent advantage of the estate, would not cut in due course of management." — But nothing in this decree contained is to prevent the said defendant S. from cutting any underwood on the said

estates which shall have become fit to cut, according to the custom of the country; And it is ordered, that it be referred to, &c., to inquire and report, whether any and what timber or wood (other than such timber or wood as the said defendant S. was entitled to cut according to the description aforesaid), has been cut by the said defendant S., upon the said estates; 2. And if so, then that said Master do take an account of such timber or wood so cut, and of the proceeds and value thereof. Adjourn, &c. *Vincent v. Spicer*, 22 Beav. 380; 4 W. R. 667; 2 Seton Dec. (Eng. ed. 1862) 893.

(e.) *Staying waste by tenants in common.*

This Court doth order, that an injunction be awarded against the defendant A., to restrain him, his servants, workmen, and agents, from cutting down any timber, or other trees, or underwood, from off the estates in the bill mentioned at unseasonable times; until, &c. 2 Seton Dec. (Eng. ed. 1862) 894.

(f.) *Staying pollution of a stream; nuisance.¹*

This Court doth order, that a perpetual injunction be awarded to restrain the Local Board of Health for the town of —, their agents, servants, and workmen, from causing or permitting to pass any sewage, filth, or other offensive matter, either solid or liquid, down or through any sewer or drain into the river W., in the bill mentioned, to the injury of the plaintiff. 2 Seton Dec. (Eng. ed. 1862) 894.

(g.) *Another form.*

This Court doth order that a perpetual injunction be awarded against the defendants, the Stowmarket Company, to restrain the said defendants, their servants, agents, and workmen, from discharging from their works in the plaintiff's bill mentioned, into the river or stream in the said bill also mentioned, so as to cause it to flow to the plaintiff's land, messuage, and mills, therein also mentioned, in a state less pure than that in which it flowed there previously to the establishment of the said works, to the injury of the plaintiff, any such refuse or other * 2308 matter * as was discharged by the defendants from the same works into the said river or stream previously to the filing of the said bill, or any noxious fluids or other foul matters whatsoever. *Lingwood v. Stowmarket Company*, L. R. 1 Eq. 77, 336.

(h.) *Decree establishing right to oyster fishing and quieting in possession, with perpetual injunction.*

Upon motion, proof of title, and affidavit of service on the defendants — This Court doth "declare, that the plaintiff and his assigns, and

¹ For other forms of injunction to stay S. C., 3 S. & G. 283; *Case v. M. R. Co.*, 27 nuisances, see *Walter v. Selfe*, 4 D. & S. 325; Beav. 254, note; *Crump v. Lambert*, L. R. Pollock v. Hester, 11 Hare, 275; *Bostock v.* 3 Eq. 409.

North Staffordshire Ry. Co. 5 D. & S. 590;

every other person or persons claiming or to claim under or by virtue of the will of, &c., is and are entitled to the exclusive right to use the piece or parcel of ground (land), part of the soil or bed of the Straits of Menai, lying and being, between, &c., and the water or waters covering the same, as beds or a bed for oysters or oyster spat, and to put down and replace, and to dredge, take, and carry away, oyster spat and oysters therefrom; and decree that the plaintiff be quieted in the exclusive possession of the oyster fishery or oyster fisheries situate, lying, and being upon or within the said piece or parcel of ground (land), or the water or waters covering the same; and the Court doth order that a perpetual injunction be awarded to restrain the defendants J. K., &c., and each and every of their agents, servants, and workmen, from using the said piece or parcel of ground (land), water or waters, and every part thereof, as beds or a bed for oyster spat or oysters, and from putting down or dredging, taking and carrying away any oyster spat and oysters thereupon or therefrom, and from moving or in any manner disturbing the oyster spat or oysters now, or at any time, lying, and being upon or within the said piece of ground (land), water or waters, and from interfering with or in any way hindering the enjoyment, use, or occupation by the plaintiff and his assigns, and every other the person or persons claiming or to claim under or by virtue of the said will of the said, &c., of the said piece or parcel of ground (land), and the water or waters covering the same, as an oyster bed or oyster fishery,"¹ Bulkley *v.* Jones (1856), 2 Seton Dec. (Eng. ed. 1862) 895, 896.

(i.) *Staying, diverting, or restraining a flow of water.*

Order of the 29th of June, 1859, to be discharged, and injunction dissolved, and instead: "The Court doth order that an injunction be awarded to restrain the defendant from diverting the water in the ponds or springs situated between the south embankment of the reservoir and the boundary wall in the pleadings mentioned, so as to prevent the same from flowing into the river P.; and from employing any steam-engines, * pumps, or any other means of using the water * 2309 in the said ponds or springs, so as to diminish the quantity of the said water which flows into the said river; and also to restrain the defendant from diverting the course of the water which flows from surface springs on the south side of the wall which extends from east to west on S. Hill, so as to prevent the same from flowing in its natural course towards and into the said river." Plaintiff and defendant agreeing that the legal right as to the matters in question be decided by, &c. And the Court doth declare, "that the plaintiff is not entitled to the use of the water in the pond called P.'s Pond." Ennor *v.* Barwell, (1860.) Leave was afterwards given to bring an action. S. C., 1 D. F. J., 530; 2 Seton Dec. (Eng. ed. 1862) 901.¹

¹ See form of order declaring an exclusive right of navigation, and enjoining an infringement of it, in Ogden *v.* Gibbons, 4 John. Ch. 174, 182, 183.

¹ See other forms in Thomas *v.* Jones, 1

Y. & C. C. 526; Cuddon *v.* Morley, 7 Hare, 207; Powell *v.* Aiken, 4 K. & J. 359, and note; Beaufort *v.* Morris, 6 Hare, 346, 348; Dugdale *v.* Robertson, 3 K. & J. 701, and note.

(j.) *Decree for abating and reducing a mill-dam which caused the water to flow back on mills above; but so framed as to conclude neither party as to the right to raise flash-boards in the dam in certain states of the river. Injunction not again to raise dam so reduced.*

Final decree.] This cause came on again to be heard upon the Master's report, and the exceptions taken thereto by the parties respectively, and was argued by counsel. On consideration whereof, it was ordered, adjudged, and decreed by the Court, that the exceptions of the said parties respectively be, and the same are, hereby overruled, and that the said report do stand in all matters confirmed except as hereinafter stated. And it not appearing by the answers of the defendants that they assert any right or title to the Eel Dam, in the said answers stated, under the owners thereof, by operation of law or otherwise, nor what the true nature and extent of the right and title of the said owners of said Eel Dam were and are; It is, thereupon, further ordered, adjudged, and decreed, that the said Albion Dam in the said pleadings mentioned ought to be reduced from its height, at the time of the filing of the plaintiffs' bill, the space of twenty-four inches from the top thereof, as a nuisance to the privileges and mills of the plaintiffs in the same bill mentioned, and in violation of their rights thereto; and the said defendants are hereby ordered to abate and reduce the said Albion Dam the said twenty-four inches accordingly, within forty days from the entering of this decree. And it is further ordered, adjudged, and decreed, that the said defendants, their heirs and assigns, be, and they hereby are, perpetually enjoined, after the same Albion Dam is so abated and reduced as aforesaid, never thereafter to raise the same dam above the level to which the same shall be so abated and reduced as aforesaid. And it is further adjudged and decreed, that a writ * 2310 of injunction *do issue forthwith against the defendants, commanding them to comply with all and singular the premises so enjoined upon them.

And inasmuch as it appears from the Master's report that in low states of the river, when it is not obstructed by snow and ice, the defendants might, without injury to the plaintiffs, put flash-boards on their dam sixteen inches and one-half wide, and the same keep up until the water in the river flows over the top of them with their present mill gates drawn, and it is not the intent of the Court, in any manner, to act upon this part of the said report, but to leave the parties respectively to their respective rights in regard thereof in the same manner as if the same were not stated in the same report; it is further ordered and declared, that no part of this decree is to be construed in any manner to affirm or deny the right of the defendants to put up such flash-boards; but the parties are left to their respective rights in the premises, as if the same were not stated in the report.

And it is further ordered and decreed, that the plaintiffs do recover their costs in the premises. *Mann v. Wilkinson, 2 Sumner, 276, 277.*

(k.) Interlocutory decree, ordering reference for inquiry.

And now this cause coming on to be heard, &c., &c., it is ordered by the Court that it be referred to T. R., Esq., as Master with directions to ascertain and report to this Court upon the evidence in the cause, and such other evidence as he may deem necessary, and such experiments as he may choose to direct, to what extent, if any, the erection of the Albion Dam has obstructed or does obstruct the natural flow of the water from the plaintiff's mill and lands, and to what extent it will be required to be lowered, if any, in order to restore the flow of said water to its state before said erection; and that he have authority to summon witnesses, administer oaths, and exercise all the usual powers of Master in Chancery in such cases, and that he have authority in particular to direct the parties to stop their several mills if necessary, in order that all such experiments as the Master may think requisite to be made may be made, and for the same purpose, if necessary, to direct that the dam may be lowered and ponds drawn off, and to compel the obedience of the said parties to all orders made by him in the necessary discharge of the duties of his appointment. And that he may report to this Court of his doings in the premises, when he shall have performed the duties of his said appointment.

And the said Master is in the mean time specially directed to proceed immediately to ascertain by actual experiments, conducted by skilful engineers, to be chosen by himself and with notice to the parties, the effect on the plaintiff's works of lowering the Albion Dam to the height at which it stood before the erection thereon of 1828, that is to say, two feet below its present height, that these experiments be made * at different states of the river, so as to show the effect * 2311 aforesaid at those several states respectively, that the Master have authority to direct the defendants to draw off the water in their pond, by gates or by reducing the height of the dam or by any other means so that the said experiments may be fully and satisfactorily made, at the said several depths of water in the river. That the said Master cause these experiments to be made forthwith, and that he report the result thereof specially to this Court. And that the Master have also authority by such experiments to ascertain the effect of lowering said dam to intermediate stages less than two feet, at the said several states of the water; and that he have authority to direct and order both parties to stop their respective works if necessary, and to do and perform whatever he may judge necessary, in order to render such experiments complete and satisfactory.

Nov. Term, 1833.

Ordered as above.

B. C., Clerk.

The parties agree that S. B. C. and R. S. S. be the engineers to be employed by the Master.

Witness, B. C., Clerk.

2283

(l.) *Another decree in like case.*

W. & D. D. F. v. Blackstone Canal Co.

This cause came on at the last term of this Court to be heard upon the bill and answer, and other proceedings and evidence in the case, and was argued by counsel.

On consideration whereof it is adjudged and declared by the Court, that the plaintiffs have sufficiently established in evidence the grievance complained of in their bill; that the defendants have not established any right to raise Woonsocket Dam and flow back the water of the Blackstone River upon the plaintiffs' mills in the manner set forth in the plaintiffs' bill under the acts of incorporation of the State of Massachusetts or of the State of Rhode Island, or any of them set forth in the defendants' answer, or under the agreement set forth in the same answer, and that the raising of the said dam as aforesaid, so far as it has injured the plaintiffs in the manner set forth in the bill, is a nuisance to the plaintiffs, and ought to be abated, and that a perpetual injunction ought to issue to the defendants, prohibiting them from hereafter keeping of, continuing, or after abatement from again raising the said dam to any height which shall be a nuisance to the plaintiffs as aforesaid. And it is decreed by the Court accordingly; but inasmuch as it does

not appear to the Court what lowering of the said Woonsocket

* 2312 Dam, not exceeding two feet, will abate and remove the * nuisance to the plaintiffs as aforesaid; it is therefore further ordered, adjudged, and decreed, that it be referred to a Master to be named by the Court, to inquire into and to report at a future time to the Court how much the said dam ought to be lowered, not exceeding two feet, as aforesaid, in order to remove and abate the nuisance to the plaintiffs as aforesaid, and the said Master is hereby authorized, at the expense of the parties or either of them, as shall be hereafter directed by the Court, in addition to an examination of all the papers and evidence in the cause, which are hereby referred to him to make and cause to be made further examinations by witnesses under oath, and by real surveys and other proceedings to be had by him in the premises, as he shall deem meet and proper to accomplish the purposes hereinbefore stated.

And the said Master shall cause due notice to be given to the parties of all meetings to be had and held by him, for the purposes aforesaid, at which meetings the parties shall be at liberty to attend and examine and prove all proper matters, with the assistance of counsel; and the Master shall, as soon as he shall have completed his proceedings, make due report thereof to the Court, and that in the mean time all future proceedings and decrees be reserved for the consideration of the Court.

JOSEPH STORY.

In this case the decree is entered as on file, and thereupon by agreement of parties, it is further ordered, that all and every further and

other proceedings in said bill and decree be for ever stayed, each party to pay the costs of their own depositions, surveys, and witnesses.

The Clerk's and Marshal's fees to be equally paid by the parties.
Farnum v. Blackstone Canal Corp., 1 Sumner, 46.

4. DECREE TO RESTRAIN THE USE OF REAL ESTATE IN VIOLATION OF AN AGREEMENT RESPECTING ITS OCCUPATION.¹

And now this cause having been fully heard, it is ordered and decreed that the demurrer be overruled. Thereupon the said defendants, by the agreement of their counsel on file in the cause, do consent that the plaintiffs' bill be taken as confessed by them, and all the facts therein stated as fully proved and established on the part of said plaintiff; and that thereupon this Court shall render such final decree in favor of the plaintiffs as by the law of this Commonwealth and the facts so established they are properly entitled to have, and according to the prayer of their bill, with taxable costs in favor of said plaintiffs.

* The Court doth thereupon decree, that the said defendants, * 2313 and each of them, their agents, assistants, and abettors, be for ever hereafter perpetually enjoined, and they are hereby enjoined, to desist and refrain from all use of the premises numbered two on Hayward Place aforesaid, or any portion of the same; and from appropriating or applying the same to the purpose of a restaurant, eating-house, saloon, or any similar use, by whatever name called or known, and from all use or application of said lot, or the buildings thereon, or any portion of the same, for any purpose whatever, except that of a "dwelling-house only," and that in the ordinary common acceptation of that term.

And it is further decreed that the plaintiffs recover of the defendants their legal, taxable costs in the premises.

And it is further ordered that the Clerk of this Court do issue a proper writ of injunction, for the carrying the other portions of this decree into effect, on application of the plaintiffs, at any time after the first day of May next. *Parker v. Nightingale*, 6 Allen, 341.

By the Court.

Boston, Feb. 8th, 1864.

G. C. W., Clerk.

5. COPYRIGHT.

(a.) *Staying publishing newspaper.*

This Court doth order that an injunction be awarded to restrain the defendants B. and H., their servants, workmen, and agents, from printing and publishing, composing, and offering to sale, the newspaper in the pleadings mentioned, called "The Real John Bull," or "The Old Real John Bull," and from printing, or publishing, or exposing, or offering for sale any newspapers or newspaper as and for a continuation of the plaintiff's said newspaper called "The Real John Bull," until, &c. *Edmonds v. Benhow*, 2 Seton Dec. (Eng. ed. 1862) 905.

¹ See *Senior v. Pawson*, L. R. 3 Eq. 330.

(b.) *Staying partial infringement.*

This Court doth order that an injunction be awarded to restrain the defendant, his servants, agents, or workmen, from printing, publishing, selling, or otherwise disposing of, such parts of the book in the bill mentioned to have been published by the defendant as hereinafter specified, viz., that part of said book of the defendant which is entitled, &c., and also that part thereof which is entitled, &c. ; until, &c. 2 Seton Dec. (Eng. ed. 1862) 905.

(c.) *Perpetual injunction upon printing, publishing, &c.*

"This cause came on to be heard, at this term, upon the bill and answer, and the Master's report, and was argued by counsel, on * 2314 consideration * whereof, it is ordered, adjudged, and decreed that the Master's report be, and the same hereby is, approved and confirmed; And thereupon it is further ordered, adjudged, and decreed by the Court, that said defendants be, and they hereby are, severally and perpetually restrained and enjoined from printing, publishing, selling, or exposing to sale, or causing or being in any way concerned in the printing, publishing, selling, or exposing to sale, of any copy or copies of the whole or any part of the three hundred and fifty-three pages copied, as reported by the Master in said Life of Washington, mentioned in the bill and answer, published by the defendants, from the Life and Writings of Washington, mentioned in the bill and answer published by the plaintiffs; and that the plaintiffs recover their costs against the defendants; the plaintiffs waiving the account prayed for in the bill, the Court does not order such account." Folsom *v.* Marsh, 2 Story, C. C. 100.

(d.) *Inquiry as to infringement.*

(*By consent.*) It is ordered that it be referred to, &c., to inquire and report, whether the copperplate published by the defendant, entitled, &c., is of the same size and scale, and has the same marginal notes and directions or instructions, and is in all respects the same as the first plate published by the plaintiff, entitled, &c., save an affected variation in the historical and geographical anecdotes in the margin, &c.¹ 2 Seton Dec. (Eng. ed. 1862) 905.

6. PATENTS.

(a.) *Staying infringing patent as to bricks.*

The Court doth order that an injunction be awarded to restrain the defendant H., his agents, servants, and workmen, from making or vending any perforated bricks upon the principle of the inventions in

¹ For other forms in like cases, see Clement *v.* Maddick, 1 Gif. 101; Pope *v.* Curl, 2 Atk. 342; Reade *v.* Lacy, 1 J. & H. 524, and note;

Mayhew *v.* Maxwell, id. 312; Jarrold *v.* Heaton, 3 K. & J. 722; Delfe *v.* Delamotte. id. 584; 2 Seton Dec. (Eng. ed. 1862) 905, 906.

the plaintiffs' bill mentioned, belonging to the plaintiffs or either of them, during the remainder of the respective terms of the patents in the plaintiffs' bill mentioned, and from counterfeiting, imitating, or resembling the same inventions, or either of them, or making any addition thereto or subtraction therefrom; until, &c. *Beart v. Hewitt* (1853), 2 Seton Dec. (Eng. ed. 1862) 909.

* (b.) *Staying infringement as to machinery.*¹ * 2315

This Court doth order, that an injunction be awarded to restrain defendants W. &c., their servants, agents, and workmen, during the continuance of the letters-patent firstly and secondly in the plaintiff's bill stated and set forth, and whilst the same may be in force, from manufacturing, selling, using, offering or exposing for sale, or making any other profitable use or disposition of any wool-combing machines, or parts of wool-combing machines, made, constructed, contrived, or arranged so as to comb wool by machinery, apparatus, arrangements, operations, contrivances, means, or appliances, similar to the machinery, apparatus, contrivances, arrangements, means, or appliances, the subject of the plaintiff's inventions or either of them, or differing therefrom colorably, or by mere mechanical equivalents, and generally from counterfeiting, imitating, or resembling plaintiff's inventions, or either of them, or any part thereof, or making any addition thereto or subtraction therefrom, and parting with the custody of any wool-combing machines, or parts of machines, whether finished or in progress, now in their or either of their possession, which have been so made, constructed, contrived, or arranged; until, &c. *Lister v. Wood* (1858), 2 Seton Dec. (Eng. ed. 1862) 909.

(c.) *Motion to stand over, with leave to bring action and direction for inspection ; defendant keeping an account.*

Defendants undertaking to keep an account of all mohair cloths, and other textile fabrics, finished by or for them, or any or either of them, in the manner in the plaintiff's bill complained of, it is ordered that this motion stand over, with liberty to the plaintiffs to bring such action at law, in, &c., against the defendants, as they may be advised; And it is ordered, that the defendants permit and suffer the plaintiffs, with such two viewers as the plaintiffs shall think proper, to go over all or any of the manufactories of the said defendants, or of any or either of them, and inspect the machinery set up there for finishing mohair cloth, or other textile fabrics, and to observe the method or methods of finishing such mohair cloth, or other textile fabrics, by the said defendants, or any or either of them, for which purpose the said defendants are to put their machinery to work in the presence of the said plaintiffs and

¹ For reference to other cases in which are forms of injunction to restrain infringements of patents, see 2 Seton Dec. (Eng. ed. 1862) 909, 910; *Caldwell v. Vanvissengen*, 9 Hare, 431; *Patent Type Co. v. Walter, John.* 732.

such viewers, and to afford every facility to them to ascertain the process of finishing cloth by means of such machinery and every part thereof, it being the object and intention of this Court to enable the plaintiffs to give such evidence to the Court and jury, on the trial of such action, as will enable them to make out, if the fact be so, the * 2316 * infringement complained of by their said bill. Liberty to apply. Beardsell *v.* Schwann (1857), 2 Seton Dec. (Eng. ed. 1862) 910.

(d.) Staying infringement, after verdict establishing patent.

The Court doth order, that an injunction be awarded to restrain the defendants D. &c., their agents, servants, and workmen, during the continuance of the letters-patent in the plaintiffs' bill mentioned, and whilst the same may be in force, from using or employing, without the leave or license of the plaintiffs, in or for the purpose of the folding of the flaps of envelopes in succession one after the other, or for the gumming or cementing together the edges of such flaps and causing such edges to adhere together whilst in course of being folded, any machines similar to the machine which was produced for inspection at their factory on the —— day of ——, as in the plaintiffs' bill stated, or any machinery, mechanism, or mechanical contrivance made or arranged, according to the plaintiffs' said patent inventions, or differing therefrom only colorably or by the substitution of mere mechanical equivalents for the same, and from folding the flaps of envelopes in succession one after the other, and gumming or cementing the edges of such flaps and causing the same to adhere together whilst such flaps are in course of folding by means of any such machine, machinery, mechanism, or mechanical contrivances, and from selling or offering for sale any envelopes which have been heretofore manufactured by the said defendants, their agents, servants, or workmen, and in the manufacture whereof any such machine, machinery, or mechanical contrivances hath, or have, been used or employed for the purpose of folding the flaps of such envelopes in succession, or for gumming or cementing, or causing the same to adhere together whilst such flaps have been in course of being folded, and generally from making, using, exercising, putting in practice, or vending plaintiffs' patent inventions, or any or either of them, without their license or authority, and from or in any wise counterfeiting, imitating, or resembling the same; until, &c. De la Rue *v.* Dickinson (1857), 2 Seton Dec. (Eng. ed. 1862) 911.

(e.) Declaration of validity of patent ; infringement ; account ; perpetual injunction.

R. W., H. S., and D. B. W. *v.* H. B., H. B., Jr., and H. F.

This cause having been brought to a final hearing upon the pleadings and proofs, and counsel for the respective parties having been heard, and the same having been duly considered by the Court : It is found and

hereby ordered, adjudged, and decreed [declared] that the letters-patent, No. 12,649, granted unto the said R. W., April 3, 1855, is a good and valid patent, being the patent referred to in the plaintiffs' * bill, and that the said R. W. was the original and first inventor of the improvement described and claimed in the said patent; * 2317 and also, that the said defendants have infringed upon the said patent, and upon the exclusive rights of the plaintiffs under the same.

And it is further ordered, adjudged, and decreed, that the plaintiffs do recover of the defendants the profits, gains, and advantages which the said defendants, or any or either of them, have received or made, or which have arisen or accrued to them, or either of them, from said infringement of the said patents, by the manufacture, use, or sale of the improvements described and secured by the said letters-patent at any and at all times since the seventeenth day of November, 1856.

And it is further ordered, adjudged, and decreed, that the said plaintiffs do recover of the defendants their costs and charges and disbursements in this suit, to be taxed.

And it is further ordered, adjudged, and decreed, that it be referred to K. G. W., one of the Masters of this Court, residing in the city of N. Y., to ascertain, take, and state, and report to the Court, an account of the gains, profits, and advantages which the said defendants, or either of them, have received, or which have arisen or accrued to them, or either of them, from infringing the said exclusive rights of the said plaintiffs by the manufacture, use, and sale of the said improvements patented in said letters-patent, since the said seventeenth day of November, 1856.

And it is further ordered, adjudged, and decreed, that the plaintiffs, on such accounting, have the right to cause an examination of said defendants, and each of them, *ore tenus*, or otherwise, and also the production of their books, vouchers, and documents of each of them, and that the said defendants attend for such purpose before said Master, from time to time, as said Master shall direct.

And it is also further ordered, adjudged, and decreed, that a perpetual injunction be issued in this suit against the said defendants, according to the prayer of the bill.

K. G. W., Clerk.

7. TRADE-MARKS.

(a.) *Staying using trade-marks as to tools or cutlery.*

This Court doth order that an injunction be awarded to restrain the defendants W. &c., respectively (and every and each of them), and the respective servants, agents, and workmen of the said defendants (and of every and each of them), from stamping, cutting, or engraving, or causing or permitting to be stamped, cut, or engraved, upon any tools or other articles manufactured for or bought, procured, or sold by * them, the words, "Collins & Co., Hartford, Cast Steel, War- * 2318 ranted," or any other words similar to, or only colorably differing from such words, or any words or marks so contrived as to represent or

lead to the belief that the said tools or other articles were the manufacture of the said Collins & Co.; and from affixing or causing to be affixed to any tools or other articles manufactured for or bought, procured, or sold by them, or otherwise using or employing, or causing or permitting to be used or employed, any labels containing the words, &c. (*as above*), or any label or labels similar to or only colorably differing from the labels made or used by the said company, as in the plaintiff's bill mentioned, or so contrived and prepared as to represent or lead to the belief that the tools or other articles manufactured or sold by the defendants were the manufacture of the said company; and also from selling, exporting, consigning, or otherwise disposing of any tools or other articles having or bearing thereon any such words, marks, or labels as in the said bill mentioned, or any other words, marks, or labels only colorably differing from the said marks and labels of the said company; until, &c. *Collins v. Walker* (1857), 2 Seton Dec. (Eng. ed. 1862) 914.

(b.) Perpetual injunction on the use of another's trade-marks.

This cause came on to be heard at this term upon the bill, answer, and proofs in the cause, and was argued by counsel on behalf of the plaintiffs, no counsel appearing for the defendant [the counsel who had previously appeared for him having voluntarily withdrawn from the cause].

On consideration whereof, it is ordered, adjudged, and decreed by the Court, that a perpetual injunction be granted in the premises according to the prayer of the bill, and that the plaintiffs do recover costs against the defendant, to be taxed by the clerk under the direction of the Court. *Taylor v. Carpenter*, 3 Story, C. C. 458.

(c.) Perpetual injunction against shipping goods with plaintiffs' trade-marks, on motion for decree.

This Court doth order that "a perpetual injunction be awarded to restrain the defendants J. and N., and each of them, their servants and agents, from affixing or applying, or causing to be affixed or applied, to any goods manufactured, sold, shipped, or supplied by them, any mark, and especially the figure of a lion, &c., so contrived as by colorable imitation or otherwise to represent the goods manufactured, sold, shipped, or supplied by the plaintiffs as being standard Spanish Stripes, &c., or other woollen goods manufactured or shipped by or for the plaintiffs, and from selling, exporting, or shipping, or causing or allowing to be shipped or exported, or otherwise disposing of, any goods manufactured

* 2319 by or for the defendants, to which any such mark, * has been or shall be affixed or applied. Defendants to pay plaintiffs' costs of suit to be taxed, &c. *Henderson v. Jones* (1861), 2 Seton Dec. (Eng. ed. 1862) 915.¹

¹ For other cases in which are found forms of injunctions to restrain use of trade-marks, see *Edelsten v. Vick*, 11 Hare, 86; *Farina v. Silverlock*, 1 K. & J. 509; S. C. 6 De G. M. &

G. 214, note; *Gant v. Aleploglu*, 6 Beav. 69, n.; *Knott v. Morgan*, 2 Keen, 220; *Morison v. Moat*, 9 Hare, 241.

8. PARTNERSHIP.

(a.) *Order for injunction against acting as partner.²*

The Court doth order that an injunction be awarded against the defendant B., his agents and servants, from entering into any contract or contracts, and from accepting, drawing, indorsing, or negotiating any bills or bill of exchange, notes or note, or written securities or security, in the name of the partnership firm of D. and B.; and from contracting any debts or debt, and buying and selling any goods, and from making or entering into any verbal or written promise, agreement, or undertaking, and from doing or causing to be done any acts or act, in the name or on the credit of the said partnership firm, or whereby the said partnership firm can, or may, in any manner become, or be made liable to, or for the payment of, any sums or sum of money, or for the performance of any contract, promise, or undertaking : until, &c. 2 Seton Dec. (Eng. ed. 1862) 917.

(b.) *Injunction on dissolution of partnership.*

This Court doth order that an injunction be awarded to restrain the defendant and his (servants and) agents from intermeddling with the partnership assets, and from signing or using the name or style of the firm of H. and D., or from trading, or dealing, in or under that name or style ; until, &c. Directions for receiver. 2 Seton Dec. (Eng. ed. 1862) 917.

9. NEGOTIATING SECURITIES.

This Court doth order that an injunction be awarded to restrain the defendants from parting with, out of the custody of them, or any of them, or indorsing, assigning, or negotiating the promissory note, dated &c., in the plaintiff's bill (and affidavit) mentioned ; until, &c.

* 10. TRANSFERS.

* 2320

The Court doth order that an injunction be awarded to restrain the defendant A. from transferring any stock standing in the name of B., the testator in, &c., named, or in the name of the said A., as the executor of the said B., or any part thereof, and from receiving the dividends and interest due or to accrue due thereon ; and also to restrain the President, Directors, & Co., of the —— bank, from permitting the said defendant A. to transfer such stock, or receive such dividends and

² Refusing to account, excluding a co-partner from an examination of the partnership books, and from a participation in the profits of the business, although breaches of duty, do not, standing alone, call for the interposition of the Court by injunction before answer, or an opportunity of hearing. *Petit v. Chevelier*,

13 N. J. Eq. 181. An injunction restraining interference with the plaintiff in the exercise of his rights as a partner of the defendants will be dissolved on the clear averment in the answer, that the partnership was dissolved by mutual consent. *Van Kuren v. Trenton Locomotive and Machine Manuf. Co.* 13 N. J. Eq. 302.

interest; until, &c. For like order as to any stock, with injunction against the bank, see *White v. White*, 2 Seton Dec. (Eng. ed. 1862) 920.

11. RAILWAYS.

(a.) *Railway Co. enjoined from continuing in possession or entering on land.*

This Court doth order that an injunction be awarded against the defendants, the L. V. Ry. Co., to restrain the defendants, their contractor, servants, agents, and workmen, from continuing in possession of the piece of land thirdly described, in the indenture of lease in the plaintiffs' bill mentioned, and whereupon the defendants have entered, or any part thereof; and from entering upon, taking, or using the said piece of land, or any part thereof, without the consent of the plaintiffs first had and obtained; until, &c. 2 Seton Dec. (Eng. ed. 1862) 928.

(b.) *Declaration of right to use railway ; rents, damage ; compensation for occupying land not authorized to be taken ; injunction.*

Declaration of plaintiffs' right to the use of the railway in the pleadings mentioned for the purpose of carrying coal, &c., upon payment of an ascertained annual rent to the land-owner. — And it is ordered, that it be referred to, &c., to take an account of what is due from the plaintiffs in respect of such rent; what reported to be due to be paid within twenty-one days from date of report. — And it is also ordered that the said Master do inquire "what is the amount of damage that has been sustained by the plaintiffs by reason of the defendant having pulled up the rails and impeded and prevented the use of the said railway, as in the bill mentioned; and that he also inquire, what is the amount of compensation to be paid to the defendant, for the use and occupation of the land whereon has been erected the engine-house,

* 2321 in, * &c., mentioned, since the — day of —." Injunction to stay defendant preventing plaintiffs replacing the rails and restoring the railway, from using it as heretofore, so as not to injure defendant's land, as long as plaintiff is entitled to use the railway; defendant to pay plaintiffs' costs of suit to this time. *Mold v. Wheatcroft* (1859), 2 Seton Dec. (Eng. ed. 1862) 929.

(c.) *Decree declaring the exclusive rights of a railroad corporation under its charter, and enjoining competing lines.*

This cause coming on to be heard at the term of October, 1863, before his Honor H. W. G., Chancellor of the State of New Jersey, at Trenton, upon the pleadings and proof in said cause, and having been duly argued by the counsel of the said parties, and the Chancellor having taken time to advise thereon until the term of February, 1864, when further time was taken to settle the forms and terms of the decree than

pronounced, and now at this time, that is to say, on the sixteenth day of May, 1865, the Chancellor is of opinion, that by virtue of the Acts of the Legislature of the State of New Jersey, bearing date, &c.

(*Here state the acts and the purpose and effect of them as contracts — to protect from competition — and the business to be protected.*)

And the Chancellor is further of opinion, that the said contract and the said Acts of the Legislature are not repugnant to, or in violation of, &c. (*State what — and the duty of defendants to respect the contract.*)

And the Chancellor is further of opinion, that the incorporation of, &c. *State the acts which constitute a violation of the exclusive privilege*; the Chancellor is further of opinion, that the said acts on the part of the said defendants, are a violation of the exclusive rights and privileges of the said plaintiffs; and that the plaintiffs are entitled to relief, and to the aid of this Court, and the protection of such rights and privileges, and to an account of all such use of said railroads and branches, and of such transportation, and to the damages they have sustained by such violation of their said exclusive franchise, and to the injunction prayed for in their supplemental bill, with their costs to be taxed.

Therefore the Chancellor doth order, adjudge, and decree that the said defendants and their confederates, their and each of their officers, contractors, servants, and agents, do absolutely desist and refrain from further transporting, or aiding or assisting in the transporting of passengers or merchandise from city to city, between the cities of New York and Philadelphia; and that the said defendants, the Raritan and Delaware Bay Railroad Company and the Camden and Atlantic Railroad Company and their confederates, contractors, and agents, desist and refrain from further permitting or allowing their respective railroads, engines, cars, or machinery, to be used for the purpose of carrying on such transportation of passengers or merchandise from city to city between the said cities, or for the purpose of aiding or assisting in the transportation of passengers or merchandise between the said cities from city to city; and that the said corporation defendants, their confederates, contractors, and agents, severally desist and refrain from forwarding and from aiding or assisting to forward, and from permitting or allowing to be forwarded by way of the said railroads and branches, or any part thereof, from any point or place in this State to any other point or place in this State, any passengers or merchandise which are, or may be, in the course of transportation from city to city between the said cities of New York and Philadelphia, and that all the said other defendants desist and refrain from aiding and abetting the said corporate defendants, or either of them, in any such forwarding of passengers or freight; and that the defendants, and each of them, together with their confederates, contractors, and agents, desist and refrain from doing any act or acts for or towards or in aid of the transportation of passengers, freight, or merchandise between New York and Philadelphia by way of said railroads, or either of them, or any part thereof, or said branches, either by using or permitting to be used the different sections thereof for that purpose in connection

with each other, or by using the said railroads, or any part thereof, or said branches, in connection with any steamboat or steamboats; and that the said corporation defendants desist and refrain from permitting their respective roads, or any section or sections thereof, to be used for any such last-mentioned purpose; and that said defendants respectively, and their confederates respectively, desist and refrain from performing, aiding, or contributing to the transportation of passengers or freight from city to city aforesaid, across the said railroads, or any part thereof, and upon steamboats running in connection therewith, by any other device or contrivance whatsoever; and that an injunction do issue **out** of and under the seal of this Court, directed to the said defendants and their confederates, their and each of their officers, agents, contractors, servants, and workmen, commanding and enjoining them, and each and every of them, that they, and each and every of them, desist and refrain from the acts aforesaid, which by this decree it is ordered, adjudged, and decreed, they shall desist and refrain from doing. And it is further ordered, adjudged, and decreed that the said defendants do pay to the plaintiffs their costs of this suit to be taxed, and the damages sustained by the plaintiffs by the unlawful acts of the defendants; and that it be referred to J. W., Esquire, one of the Masters of this Court, to take an account of all passengers and freight carried on the railroads of the said corporation defendants, or on any part thereof, in course of transportation from city to city aforesaid, distinguishing what passengers were soldiers, and what freight was horses or munitions of war transported by order of or for the use of the Government of * 2323 the United * States, and to take an account of and ascertain the damages sustained by the plaintiffs by the violation of their exclusive franchise by the defendants; and that the parties be examined before the Master, and that the Master proceed with all convenient speed; and that the defendants pay to the plaintiffs, as well their costs in this suit to be taxed, as the damages aforesaid, and that the plaintiffs have liberty to apply on the part of this decree in case of further violation of said exclusive franchise by any device or means whatsoever; and all further equity is reserved until the coming in of said report. Rar. & Del. R. Bay Co. v. Del. & Rar. Canal and C. & A. R. and T. Cos., 2 Beasley (N. J.) 546.

12. MANDATORY.¹

Enjoining the return of documents.

This Court doth order that an injunction be awarded to restrain the defendant H. from detaining and keeping possession of the books, deeds, documents, and papers removed as mentioned in the plaintiffs' affidavit by the said defendant, or by his order, from the chambers occupied by the plaintiffs, for retaining which no written authority has

¹ See *ante*, p. 1661, 1681, and notes. As to mandatory injunctions, see *Senior v. Pawson*, L. R. 3 Eq. 330; *Beadel v. Perry*, L. R. 3 Eq. 485; *Att.-Gen. v. Mid-Kent Ry. Co.* L. R. 3 Ch. 100; *Knapp v. Douglas Axe Co.* 13 Allen 1.

been produced by the defendant, as mentioned in the plaintiffs' affidavit of, &c., or any of them, except the five boxes not claimed by the plaintiffs, and from permitting the same or any or either of them, except the said five boxes, to remain away from the office of the plaintiffs, or from parting with the books, &c., removed by the defendant, or by his order, from the chambers occupied by the plaintiffs, or any of them, except the said five boxes, to any person or persons other than the plaintiffs, and from destroying, mutilating, or obliterating the said books, &c., or any or either of them, except as aforesaid, or any parts or part thereof respectively, or any entries or entry therein, or from making any alteration, interlineation, or erasure in the same, or any of them; until, &c. 2 Seton Dec. (Eng. ed. 1862) 936.

13. GENERAL.

Restraining a town and its officers from paying out money for unauthorized purposes.²

And the inhabitants of the said town of B., and all their officers and * servants, are hereby enjoined and commanded that * 2324 they apply the said money to the payment of the legal debts and liabilities of the town, and to no other purpose; and that they shall not at any time, by their vote, or by taxation, or by pledge of the credit of the town, or by the use of its funds, or in any other manner, make any provision, directly or indirectly, for the payment of the money mentioned in the said claims of J. H. and S. O. M., and of E. B. G., set forth in the bill, nor any part thereof, or for the indemnity, in whole or in part, of any person or persons by whom said sums of money have been paid or may hereafter be paid, in whole or in part, or of any persons who may be interested in the same, or in any way, directly or indirectly, to evade the true intent and effect of this decree.

14. WRIT OF INJUNCTION RESTRAINING ONE HOLDING PROPERTY OF A FOREIGN DEBTOR WHICH COULD NOT BE ATTACHED AT LAW FROM TRANSFERRING OR DISPOSING OF IT.

Commonwealth of Massachusetts.

S—, ss.

To H. E., of B., in said County, his servants, agents, attorneys, and counsellors, and each and every of them,

GREETING:

Whereas it has been represented unto the Justices of our Supreme Judicial Court, now holden at Boston, within and for said county, sitting as a Court of Chancery, that the Columbia Insurance Company, of

² Frost v. Belmont, 6 Allen, 152. See form of bill in such a case in Merrill v. Plainfield, 45 N. H. 126.

The injunction will not be dissolved in such

a case as to the particular officers named as defendants, although they have ceased to hold the respective offices named. Clark v. Wardwell, 55 Maine, 61.

Columbia, South Carolina, is a foreign insurance company, and that said company is largely indebted to D. S., of N., in the County of E., as in said D. S.'s bill of complaint, this day filed in our said Court, is alleged, and that the said company have no property in this Commonwealth which can be come at to be attached or taken on execution, and that you—the said H. E., have a large amount of the property of the said company now in your possession; consisting chiefly of valuable promissory notes belonging to said company,

We, therefore, in consideration of the premises, do strictly enjoin and command you, the said H. E., and all and every the persons before named, from passing any promissory notes or other property now in your possession, or under your control, belonging to the said Columbia Insurance Company, into the possession of any person whatever, and especially not into the possession or control of the said company, or any officer or agent of the same; but to keep and retain the same in your own hands, until the further order of our said Court or some one of the Justices thereof.

Witness, L. S., Esquire, at B., this —— day of ——.

G. C. W., Clerk.

*2325

* 15. DISSOLVING OR CONTINUING.

(a.) *Injunction dissolved or continued on motion.*

Upon motion, &c., by counsel for the defendant [*if plaintiff appears*, and upon hearing counsel for the plaintiff], and upon reading the order dated, &c. [*enter affidavits and answers, if any, and if plaintiff does not appear, an affidavit of service of notice of this motion on the plaintiff*]. This Court doth order, that the injunction awarded by the said order, dated, &c., do stand dissolved [*or, be continued until the hearing of this cause, or until the further order of this Court*].

(b.) *Continued at the hearing.*

And it is ordered that the injunction awarded against the defendant H. by the order, dated, &c., be continued until further order.

16. PERPETUAL AT HEARING.

Decree making injunction perpetual as to copyright.

This Court doth order that the injunction granted (awarded) in this cause to restrain the defendants, their servants, agents, or workmen, from printing, publishing, or vending a book, comedy, or farce, called, &c., or any part thereof, be made perpetual; and the plaintiff (by his counsel) waiving the account prayed by the bill, the Court doth not think fit to direct any account. Defendants to pay plaintiff's costs.
2 Seton Dec. (Eng. ed. 1862) 944.

17. BREACH OF INJUNCTION.

(a.) *Comittal for breach of injunction.*

Whereas the plaintiff, on the — day of —, obtained an injunction [*Recite injunction; or, if writ not issued and served, whereas by an order dated, &c. Recite order for injunction.*]. Now, upon motion, &c., and upon [*if the defendant appears, hearing counsel for the defendant and*] reading [*if the defendant does not appear, an affidavit of, &c., filed, &c., of notice of this motion to the defendant*] the said order, the affidavit of, &c. [*enter evidence*]; and this Court, being of opinion, upon consideration of the facts disclosed by the said affidavit of, &c. [*or, the said affidavits*], that the said defendant has been guilty of a contempt of this Court by a breach of the said injunction, doth order that the said defendant A. do stand committed to the — prison for his said contempt. 2 Seton Dec. (Eng. ed. 1862) 945.

* (b.) *Comittal to secure appearance to answer for breach of injunction.* * 2326

State of V., }
C — County, ss. } To any Sheriff, &c.,

GREETING:

By authority of the State of V., you are hereby commanded to attach the body of A. W. P. and him safely keep by committing him to jail at I —, in the County of O —, to the jailer therein, who is ordered to receive him and hold him, so you have him to appear before the Chancellor at the next term of the Court of Chancery at I —, in the County of O —, on the — day of —, A. D. 18 —, then and there to answer to the complaint aforesaid of S. M. F. and J. C. S. for an alleged contempt, and to abide the order of Court therein. Provided, nevertheless, that, at any time before the next term aforesaid, the said A. W. P. may be released from confinement by order from the clerk of the Court of Chancery in said county, on filing with the clerk of said Court a good and sufficient bond, with surety or sureties, to and in favor of said plaintiffs, in the sum of — dollars, conditioned that the defendant then and there appear in said Court of Chancery and before any Chancellor then and there present, and continue to appear from day to day and from term to term until the matters of the complaint be finally disposed of, and stand to and abide by all orders and pay all fines, damages, or costs, made or imposed in the premises.

Hereof fail not, but make due service and return.

Given under my hand, at —, in the County of —, this — day of —, A. D. 18 —.

B. H. S., *Chancellor.*

(c.) Final decree after a hearing in regard to the damages, costs, and fine to be imposed for a breach of an injunction, and warrant of attachment and committal to secure the payment of the same.

J. C. S. v. A. W. P. { Court of Chancery, O— County,
— Term, 18—.

This cause having been fully heard, so far as the complaint for contempt is concerned, upon the proofs, allegations of the parties, and the argument of their respective solicitors, and having been duly considered by the Court, it is adjudged that said A. W. P. has been guilty of a contempt in manner and form as alleged in the complaint, in that he did wilfully violate said order of injunction in said complaint referred to, by selling and removing, or causing to be removed, into the province or dominion of Canada, and beyond the reach of the process of this Court, a certain steam-engine and elevator, and other machinery attached and connected therewith, included within the terms of said injunction.

* 2327 injunction, and did commit other waste upon the masonry of said limekiln, * as the plaintiffs have complained against him; and it is considered and adjudged that the damage to the plaintiffs by the defendant's said unlawful act is the sum of — dollars, and said A. W. P. is hereby ordered and decreed to pay forthwith to the clerk of the Court of Chancery, in the County of —, for the plaintiffs, said sum of — dollars, with the costs of this proceeding, to be taxed by the clerk; and also to pay to said clerk, for the treasury of the State of V—, the sum of — dollars as a further fine on this behalf; and it is further ordered and decreed that said A. W. P., in default of immediate and full payment of said several sums of money, be committed to prison in the county jail at I—, in said O— County, and be therein confined until said several sums, with interest thereon from this day, together with costs of commitment and confinement in jail, shall be fully paid.

Done in Court, this — day of —, A. D. 18—.

B. H. S., *Chancellor.*

State of V.
O— County, ss. } To any Sheriff, &c.,

GREETING:

By the authority of the State of V____, you are hereby commanded to attach the body of A. W. P., of ___, in said County, and, unless he shall forthwith pay, or cause to be paid, the several sums of money in the foregoing decree of the Court of Chancery ordered to be paid, the said A. W. P. having been adjudged guilty of a contempt as is therein set forth, you will proceed and commit the said A. W. P. to prison in the common jail, in I____, in said O____ County; and you will lodge with the keeper of said prison a true and attested copy of this precept and of the foregoing decree; and the keeper of said prison is commanded to receive the said A. W. P. within said prison, and to keep and hold him

a prisoner within said prison until he shall pay said several sums, interest, and cost, as in said decree required.

Given under my hand, at —, in th County of —, this — day of — A. D. 18—.

B. H. S., *Chancellor.*

(d.) *Sequestration.*

Whereas by an order, &c., the defendants, the Manchester, &c., by their counsel, undertaking, &c. [*Recital of order*]; now upon motion this day made, &c., who alleged that it appears by the affidavit of, &c., that the defendants have not complied with their said undertaking, by permitting the plaintiffs to use their railway and conveniences connected therewith from C. to S., and upon hearing counsel for the defendants, and reading the said affidavits, and the affidavit of, &c. And * this Court being of opinion, that the defendants, the Man- * 2328 chester, &c., have committed (been guilty of) a contempt of this Court in not complying with their undertaking, to permit the plaintiffs to use their railway and conveniences connected therewith from C. to S., in the said order, dated, &c., mentioned, doth order, that a commission of sequestration do issue, directed to certain commissioners to be therein named, to sequester the personal estate, and the rents, issues, and profits of the real estates of the said defendants, the Manchester, &c., until the further order of this Court. 2 Seton Dec. (Eng. ed. 1862) 946. See *Att'y-Gen. v. G. N. Ry.*, 4 D. & S. 89; *Shrews. & B. Ry. v. Stour Val. Ry.*, 2 D. M. G. 866.

18. NE EXEAT REGNO.

(a.) *Order for writ to issue.*

Upon motion, &c., and upon reading an affidavit of, &c., filed, &c., [*enter evidence, and if before appearance.* and the clerk's certificate of the filing of the plaintiff's bill in this cause on the — day of —]; and the plaintiff by his counsel undertaking, &c. [*as to damages*]; This Court doth order, that a writ [*or, one more writ or writs*] of *ne exeat regno* do issue against the said defendant A., until this Court make another order to the contrary; and the said writ [*or, writs*] is [*or, are*] to be marked for security in the sum of \$—— in words, at length, and not in figures. 2 Seton, Dec. (Eng. ed. 1862) 959.

(b.) *General form of the writ.*

To the sheriff of, &c.,

GREETING :

Whereas it is represented to us in our Court of Chancery, on the part of A. B., plaintiff, against C. D., defendant, amongst other things, that he, the said defendant, is greatly indebted to the said plaintiff, and designs quickly to go into parts beyond the seas, as by oath made in

that behalf appears; which tends to the great prejudice and damage of the said plaintiff. Therefore, in order to prevent this¹ injustice, we do hereby command you, that you do, without delay, cause the said C. D. personally to come before you, and give sufficient bail or security, in the sum of —— (*amount mentioned in the order for the writ*), that he, the said C. D., will not go or attempt to go into parts beyond the seas, without leave of our said Court, and in case the said C. D. shall refuse to give such bail or security, then you are to commit him, the * 2329 said * C. D., to our next prison; there to be kept in safe custody until he shall do it of his own accord. And when you shall have taken such security, you are forthwith to make and return a certificate thereof to our said Court of Chancery, distinctly and plainly under your seal, together with this writ.

Witness —, at —, the — day of —, in the year 18—.

(c.) *Writ discharged on defendant giving security.*

Upon appeal motion from order of, &c., dismissing defendant's motion, and for leave to go out of the jurisdiction for — months, he undertaking then to return, it is ordered, that upon the defendant M. giving security to the amount of \$—, with two sureties, such security to be approved by the Court [or Judge, or Master], to answer such sum as may be found due from him in this cause, the writ of *ne exeat regno* issued in this cause be discharged; and it is ordered, that the order of, &c., dated, &c., be also discharged, except so much thereof as ordered that the defendant M. should pay to the plaintiff his costs of that application, to be taxed, &c. Lee v. Melendez (1849), 2 Seton, Dec. (Eng. ed. 1862) 960.

(d.) *Order for examination of defendant as of poor debtor. (Massachusetts.)*

It is ordered by the Court, that "W. J. H., Esquire, a Master in Chancery for the county of —, be, and he hereby is, appointed to take the examination of said H. (the defendant), upon the petition for his discharge from arrest upon a writ of *ne exeat regno*, sued out by the plaintiffs in the said county of S., in the same manner and with the same effect as if he were a debtor offering to take the poor debtor's oath; to take the examination in writing upon interrogatories, and report the same to one of the Justices of this Court, as soon as may be. Due notice of the time and place of the examination to be given to the solicitor of the plaintiffs." Rice v. Hale, 5 Cush. 244.

¹ "His," in Braithwaite's Pr. 229, 231; "this" in Hinde, 613; Beames on *Ne Exeat*. Veal's Pr. 73, 75; Harr. by Newl. 537; but 23.

(e.) *Notice of motion for the discharge of the writ.*

In Chancery.

(*Title of cause or matter.*)

Take notice, that this Honorable Court will be moved before (*state what Judge or Court*), on —, the — day of —, instant [or, next], at — o'clock in the — noon, on the part of the defendant, C. D., that the writ of *ne exeat regno* issued against him pursuant to the order dated the — day of —, 18—, and the said order, may be discharged with costs, including the costs of this application ; and that * the plaintiff may be ordered to pay such costs to the said defendant, — *If so* ; and that the bond given by the said defendant to the sheriff of —, pursuant to the said order and writ, may be delivered up to be cancelled. And that an inquiry may be made what damages have been sustained by the said defendant by reason of the said order having been made. And that the plaintiff may be ordered, pursuant to his undertaking, contained in the said order, to pay to the said defendant, within (one month) after the date of the Master's certificate of the result of such inquiry, what shall be thereby certified in respect of such damages.

(f.) *Ne exeat discharged ; inquiry as to damages and payment according to undertaking.*

The Court doth order, that the writ of *ne exeat regno* issued against the defendant M. pursuant to the order, dated, &c., and the said order, be respectively discharged with costs, including the costs of this application, such costs to be taxed, &c., and paid by the plaintiffs, S., &c., to the said defendant M. ; and that it be referred to, &c., to inquire and report what damages have been sustained by the said defendant, M., by reason of the said order, dated, &c., having been made ; and that the plaintiff S., &c., pursuant to their undertaking contained in the said order, within one month after the date of the Master's report of the result of the said inquiry, pay what shall be certified in respect of such damages to the said defendant M. Liberty to apply. Sickell v. Raphael (1861), 2 Seton Dec. (Eng. ed. 1862) 960.

SECTION II.

INTERPLEADER.

1. STAYING PROCEEDINGS.

(a.) *Injunction on motion upon payment into Court.*

It is ordered, that the plaintiffs W. and B. be at liberty to pay the sum of \$—— insured on the life of H., into the bank, with the privity, &c., to the credit of this cause ; and thereupon, it is ordered, that an

injunction be awarded to restrain the defendants F., and M. his wife, from proceeding in the action at Law commenced by them against the plaintiffs, as in the bill mentioned; and to restrain the said defendants from commencing or preventing any action or actions, suit or suits, or other proceedings against the plaintiffs, or either of them, to recover the money insured by the policies in the bill mentioned.—Direction for investment when paid in. 2 Seton Dec. (Eng. ed. 1862) 962.

* 2331 * (b.) *Same; on undertaking as to the subject-matter.*

Plaintiffs sold resin to Ws., but retained possession at Ws.' request; Ws. resold to B., who, before delivery, became bankrupt. Actions were brought against plaintiffs by Ws., and by C., &c., B.'s assignees. Blann was assignee under trust deed for the creditors of Ws.

And the plaintiffs (by their counsel), undertaking not to part with the — tons of resin mentioned in the plaintiffs' bill, until the further order of this Court, and also undertaking to give a notice of motion that the said — tons of resin may be sold and the proceeds thereof paid into Court, it is ordered that an injunction be awarded to restrain the defendants Ws. and C. from prosecuting the actions at law commenced by them respectively against the plaintiffs, for or in respect of the — tons of resin in the bill mentioned, and also to restrain the said defendants, together with the defendant Blann, from commencing or prosecuting any further or other action or suit against the plaintiffs, for or in respect of the said — tons of resin; until, &c. 2 Seton Dec. (Eng. ed. 1862) 962.

(c.) *Interpleader in favor of bank; United States Circuit Court cannot enjoin suit in State Court; injunction on action in United States Court; unless adverse parties elect to interplead; in case of such election funds due paid into Court.*

This cause came on to be heard and was argued by counsel, and thereupon, upon consideration thereof, it appearing to the Court that the plaintiffs held the assets and funds in the bill mentioned for the true owner, without having or claiming any right or interest therein, and that they are ready and willing to deliver the same over to whomsoever may have right thereto; and it appearing to the Court that the defendants E. S. and M. A. F. have heretofore filed their bill in the Court of Chancery in the State of, &c., against the plaintiffs and the defendant P. R. Y., alleging the full right and title to the said funds and assets to be vested in and to belong to the said E. S. and M. A. F.; and it appearing to the Court that the plaintiffs and the said P. R. Y. entered their respective appearances in said suit in said Court of Chancery, and that said suit is still pending and undetermined; and it further appearing to the Court that after such suit was instituted the said P. R. Y. commenced in this Court in his own name, two separate actions at law against the plaintiffs, one in tort, in which he seeks to recover the value

of said funds and assets, and the other in contract, in which damages are demanded for the detention of the said assets, and that the plaintiffs have appeared in the said actions, and the same are yet pending and undetermined in this Court; it is considered by the Court that the plaintiffs are entitled to relief in this Court in Equity; * but, inasmuch as the suit instituted against the plaintiffs by the said E. S. and M. A. F., is prosecuted in the Court of Chancery, of the State of, &c., and the proceedings before that tribunal are not within the cognizance of this Court, or subject to its control, it is considered by the Court, that so much of the prayer of the said bill as seeks an interpleader in the premises, and prays the same to be decreed by this Court against the above-named defendants, ought not to be granted, and it is, therefore, ordered, that the same be denied. It is further ordered, that an injunction issue, according to the prayer of the bill, against the said P. R. Y., restraining him from further prosecuting his said actions at Law, or either of them, instituted in this Court against the plaintiffs, until the final decision of the said suit pending in the Court of Chancery, of the State of, &c., unless the said P. R. Y. and E. S. and M. A. F. shall, within twenty days from the date of this order, file their stipulation in writing in this Court, electing to interplead between themselves in this Court in respect to the subject-matter aforesaid; and, in case of such interpleader between the said parties, it is ordered, that the said plaintiffs thereupon pay into this Court the funds and assets aforesaid, first deducting therefrom such their costs and expenses as shall be allowed them by the Court.

2. DECREE IN INTERPLEADER SUIT.

(a.) *Direction to interplead ; payment of costs.*

For statement of case, see No. 1 (a.) p. 2327. This Court doth order that the parties interplead ; and for that purpose it is ordered that the defendants W., &c., proceed in the action of, &c., brought by them against the plaintiffs (as in the bill mentioned), with liberty for the defendants C., &c., the assignees of B., to defend such action. Direction to tax the plaintiffs' costs of suit, and also of the said action, and of the action brought by the defendants C., &c., against the plaintiffs, so far as they have proceeded ; and to raise and pay such costs from proceeds of sale of the resin paid into Court. Adjourn, &c., until after trial. 2 Seton Dec. (Eng. ed. 1862) 964.

(b.) *Action stayed as to policy money ; inquiry who entitled.*

(*By consent.*) Plaintiff to be at liberty to retain the sum of \$—— for his costs of the action at Law in the bill mentioned, and of this cause out of the sum of \$——, the amount due upon the policy in the bill mentioned. And it is ordered that the plaintiff M., on or before, &c., pay the sum of \$——, being the residue of the said sum of \$——, after such retainer, into the bank, &c., to the credit of the cause.

* Directions to invest ; injunction to stay the defendant T. from * 2333

prosecuting the action at Law commenced by her against the plaintiff, and to stay her and the other defendants from commencing or prosecuting any other action against the plaintiff or the Insurance Company in respect of any money due on the policy. And it is ordered, that all further proceedings in this cause be stayed as regards the plaintiff; and as between the defendants that an inquiry be made who is entitled to the said sum of \$—. *Macintyre v. Thomson* (1860), 2 Seton Dec. (Eng. ed. 1862) 964.

(c.) *Interpleader declaring the persons entitled ; costs to be taxed as between solicitor and client, and paid out of fund ; balance to be paid over to persons entitled ; bill dismissed without costs, as to other defendants.*

Supreme Judicial Court.

SUFFOLK, ss.

In Equity.

C. G. L., Executor, *v. I. T. et al.*

This cause coming on to be heard, it appeared that the said Israel Thorndike, the elder, by his last will directed his executors, of whom the complainant [plaintiff] is the survivor, to place the sum of twenty thousand dollars in the office of the Massachusetts Hospital Life Insurance Company, in trust, to receive the income, and pay it annually to his son Andrew Thorndike, during his life, and at his decease, to take up the sum and pay it to the heirs-at-law of the said Andrew; that said deposit was made, and the income paid to the said Andrew during his life; that upon his decease Israel Thorndike, a brother of the said Andrew, brought his action at Law against the said executors, claiming one-sixth part of said fund as one of the heirs-at-law of the said Andrew; that, thereupon, the said complainant [plaintiff] filed his bill and amended bills in Equity against the said Israel and other persons, who would be the heirs-at-law of the said Andrew, if he had died unmarried and without lawful issue; and also against Katharina Bayerl Thorndike, claiming to be the lawful widow of the said Andrew; and against Andreas Thorndike and Anna Loring Thorndike, infants, claiming to be the lawful issue and heirs-at-law of the said Andrew, praying that the said Israel might be enjoined from prosecuting the said suit at Law, and that the several parties might interplead and present their respective claims for the consideration and determination of the Court; and thereupon the said parties did appear, by their respective counsel and guardians, and proofs being taken and read, and upon arguments of counsel, it was considered, and is now adjudged and decreed [declared], that the said Andreas Thorndike and Anna Loring * 2334 Thorndike * are both children of the said Andrew, begotten upon the body of the said Katharina, before marriage; that afterwards the said Andrew was duly and lawfully married to the said Katharina, lived with her as his lawful wife, and openly and publicly acknowledged the said Andreas and Anna Loring to be his children and

heirs-at-law; that by reason thereof they are entitled, under the will of the said Israel Thorndike the elder, to the said sum of money to be divided between them in equal shares; and that the said Katharina is not entitled to any part thereof; and that the other defendants are not entitled.

And it appearing to the Court, by the statement of the said complainant [plaintiff], that he holds the sum of twenty thousand seven hundred forty-five dollars and twenty-seven cents, subject to the order and direction of the Court: It is further ordered and decreed, that he do pay to the solicitors, F. C. L., C. W. L., and A. D., their costs of counsel fees, to be taxed as between solicitor and client, and that the residue thereof be paid one-half part to J. G., guardian of the said **Andreas Thorndike**, and one-half part to W. I. B., guardian of the said **Anna Loring Thorndike**; and that the bill be dismissed as to the other defendants, without costs. *Loring v. Thorndike*, 5 Allen, 257.

By the order of the P. M., Esq.,

One of the Justices of the said Court.

G. C. W., Clerk.

March 30, 1863.

SECTION III.

1. ISSUES.

(a.) Order for an issue.¹

"Inasmuch as it does not satisfactorily appear to the Court, that any agreement has been made by and between the parties, as to the amount of such damages and compensation [*in dispute*], to the end that the same may be satisfactorily ascertained, it is further ordered, adjudged, and decreed, that an issue be made up between the parties, to ascertain, by the verdict of a jury, &c., the amount of such damages and compensation." Directions as to the Court and term; form of the issue; restrictions on plaintiff in the trial; admissions to * be * 2335 made by defendant; allowances by the jury; "and that all further directions be reserved until the said issue shall be tried, and the postea returned to this Court." *Phillips v. Thompson*, reported 1 John. Ch. 152.

¹ See directions for an issue on the question of violation of copyright in *Emerson v. Davies*, 3 Story C. C. 798; Forms of Order, for issues in *Hoitt v. Burleigh*, 18 N. H. 390; *Tappan v. Evans*, 11 N. H. 311, 335. It is settled in New Hampshire, that a party to a bill in Equity has a constitutional right to require a trial by jury of a contested matter of fact, if he asserts that right at a proper stage

of the cause. *Hoitt v. Burleigh*, 18 N. H. 389. See *ante*, Vol. II. pp. 1075, 1076, in note. The proper stage for this seems to be after replication and before taking testimony. *Hoitt v. Burleigh*, *supra*. But the Court, for sufficient reasons, may cause issues to be framed after the testimony has been taken. *Hoitt v. Burleigh*, *supra*. See *ante*, Vol. II. p. 1110, in note.

(b.) *Same.*

E—, ss.

S. J. C.

In Equity.

J. H., Ex'r v. D. P.
D. P. v. J. H., Ex'r.

And now, after hearing the parties, it is ordered that issues be framed in the above cases, for the purpose of submitting to a jury the following questions:

1. What shares or proportions did G. H. [the testator] during his lifetime own in the lot or parcel of land first set out and described in the bill of said J. H., executor?
2. Did G. H. [the testator] during his lifetime own any share or part in the lot of land secondly set out and described in the bill of said J. H., executor, and, if any, what share or part did he so own?

A separate issue is to be framed for the purpose of presenting each of the above questions; in which the said executor is to aver the share or proportion which he claims that his testator owned in each of said lots or parcels of land; and the said D. P. is to traverse said averments; but in the issue embracing the inquiry as to the title to the first lot or parcel, described in the bill of said executor, the said D. P. will not be permitted to traverse the fact of title in said testator to some portions of said lot or parcel.¹

The above issues are to be framed by the counsel and submitted to the Court for approval, on or before the — Tuesday of — next, on which day a further order will be passed for the trial thereof. [Hodges v. Pingree, Essex Co., Mass., Jan. 18, 1860, G. T. B., J. S. J. C.]

(c.) *Same.*

P—, ss.

S. J. C.

In Equity.

J. A. v. C. L.

And now, on motion of the plaintiff, and after hearing the parties, the Court doth think fit and proper, and doth order that the matters of fraud alleged in the bill, and in dispute in this cause, be tried and determined by a jury on the following issue to be joined, viz., &c.

* 2336

*(d.) *Same.*

"And now, upon motion of the parties and due examination of the pleadings, the Court doth think fit and proper [and doth order] that the matters in dispute in this cause be tried and determined by a jury upon the following issues to be joined, viz." "And it is further ordered, that the said issues stand for trial at the — next to be held in the county of —, on the, &c., and that upon the trial of said issues, the answer of the defendant and the plaintiff's bill, and the depositions now on file may be read, and that either party may offer any competent evi-

¹ See *ante*, Vol. II. p. 1112, and note. For Form of Issue as to the existence of a partnership, see *Drope v. Miller*, 1 Hemp. 49, 50.

dence under the directions of the presiding Judge. And all further directions are reserved until after the trial of said issue."

(e.) *Issue devisavit vel non. Modern Form. [English.]*

And this Court being desirous of having the following question of fact decided by a jury, that is to say: "Whether the paper writing dated, &c., in the pleadings mentioned, purporting to be the will of C., of, &c., is or is not the last will and testament of the said C. It is ordered that an issue [*or, issues*]," &c.

(f.) *Issues as to clause in will.*

It is ordered that the parties proceed to a trial at Law, at the — next to be holden, &c., on the following issues: 1. Whether H., late of, &c., deceased, did, in and by a certain paper writing, dated, &c., purporting to be a codicil to the last will and testament of the said H., devise in manner and form following, that is to say, &c. [*stating part not disputed*]; 2. Whether the said H., having in and by his will dated, &c., from and after, &c., devised, &c., did by his said codicil devise in manner and form following, that is to say, &c. [*stating part disputed*]." Defendant H. to be plaintiff at Law.

(g.) *As to validity of bond.*

This Court being desirous of having the following questions of fact decided by a jury, that is to say: 1. Whether the bond and warrant of attorney was obtained by the plaintiff by means of any fraudulent (or unfair) representations by the obligees or any of them; 2. Whether the same was obtained by any untrue representation; 3. Whether the same was obtained by any fraudulent (or unfair) concealment or suppression by the obligees, or either of them; 4. Whether the bond, &c., was given to secure any debt or liability, other than the whole or part of the balance due from P. to the firm in the pleadings mentioned. Parker v. Morrell, 2 Ph. 453; 2 Seton Dec. (Eng. ed. 1862) 985. "Unfair" was objected to by the L. C.

* (h.) *As to sanity, and validity of deed; fraud.* * 2337

1. Whether M., in, &c., named, at the time of the execution of the indentures dated, &c., in, &c., mentioned, was of sound mind, understanding, and capacity to execute the said deeds; 2. Whether the said deeds were obtained from the said M. by fraud or imposition.¹

(i.) *Issue as to damages.*

For issue in injunction suit, "Whether the plaintiffs, to the damage or injury of the defendant, prevented the defendant from completing his

¹ For Form of Order for Issue to try a question of lunacy, see Matter of Wendell, 1 John. Ch. 603.

contract." Plaintiffs to admit that they did so prevent, and employ their own workmen to complete. 2 Seton Dec. (Eng. ed. 1862) 987.

(j.) *Issues as to right of way.*

For issues: "1. As to right of way through a place called 'George yard; ' 2. If there be any such right, whether it extends over the whole; 3. If not, what is the extent, length, breadth, and direction of it; 4. Whether any such right has been obstructed or disturbed by the defendants, or any of them, and if so, in what manner and to what extent; 5. Whether there is any public right (other than a right of way) over the whole; 6. Whether such right, if any, has been obstructed or disturbed by the defendants, &c." Direction for special circumstances to be indorsed on the postea. 2 Seton Dec. (Eng. ed. 1862) 988.

(k.) *Directions after issues awarded. (N. H.)*

"The plaintiff in this case having, on motion, obtained an award of issues to be tried by the jury, which are already framed and settled, and filed in the cause, it is ordered, that said issues be sent to the trial term of this Court, in this county, for trial by the jury, the verdict thereon to be certified to the law term of this Court. And it is further ordered, that the plaintiff here shall be regarded as the plaintiff in the trial of these issues, and that the parties upon the trial may read the bill and answers, and any evidence legally taken to be used on the hearing in Chancery, unless in cases where the attendance of any of the witnesses is actually procured; and also may offer such other and further evidence, including the testimony of the parties, as in Law would be competent on the trial of such issues." [Clark v. Congregational Society, 44 N. Hamp. 382, 383.]

(l.) *Form of verdict indorsed on record. [English Form.]*

Afterwards on the — and — days of Jan. 1860, and on this day
 (before, &c.), came the parties within named, by their solicitors
 * 2338 and a * jury of the county of Middlesex being summoned also
 came, who being sworn to try the question between the parties
 upon their oath say: "That the defendant B. did make or enter into,
 or give authority to make or enter into, the alleged agreement in the
 pleadings mentioned, dated," &c. Morrison v. Barrow (1860), 2 Seton
 Dec. (Eng. ed. 1862) 971.

(m.) *Another Form. (Mass.)*

"The jury find that the said O. M. F. did sign, execute, and deliver the agreement of compromise of which a copy is annexed to the plaintiff's bill marked (B.). And the jury further find that the signature of the said O. M. F. to the aforesaid agreement of compromise was not procured, brought about and effected by fraud, imposition, and false

representations on the part of the said F. L. and wife, and their agents."¹ [Leach and wife *v.* Fobes, Plymouth Co., Mass., 1858.]

2. ORDER FOR NEW TRIAL.

(a.) *Modern Form.*

It is ordered that the parties proceed to a new trial of the issue directed in this cause by the order dated, &c., at the next —, &c., to be holden, &c., in the manner directed by the said order. Short *v.* Macaulay (1857), 2 Seton Dec. (Eng. ed. 1662) 990.

3. ORDER ON EQUITY RESERVED AFTER TRIAL OF ISSUE.

This cause coming on (the — day of —, and) this day to be heard and debated before this Court, &c., in the presence of counsel learned for, &c., upon the equity reserved by the order dated, &c., the parties having, pursuant to the said order, proceeded to trial of the issue [*or, several issues or question or questions of fact*] thereby directed before the Court of, &c., at the sittings, &c., where the jury found, &c. [*state from the postea*], upon opening and debate of the matter, and hearing the said order and the postea [*enter any other evidence*] read, and was alleged, &c. This Court, &c., doth, &c.

4. VARIOUS ORDERS ON THE EQUITY RESERVED.

(a.) *After issue as to will in administration suit; costs.*

Directions to establish will, administer estate, and tax costs of suit to all parties as between solicitor and client. "And in like manner to * tax the several parties to the issues directed by * 2339, the decree made in this cause, their costs of such issues and incident thereto." Plaintiffs to retain and pay costs out of personal estate, and be allowed them in account. Usual directions.

(b.) *After issue as to clause in will.*

This Court doth declare, that it appears, by the finding of the jury, that the part of the codicil of the testator H., whereby he expressed himself as follows, &c., does not constitute the will of the testator; And that the part of the codicil of the testator, whereby he expressed himself as follows, &c., doth constitute the will of the testator; and that one part of the said codicil constituting, and another part thereof not constituting, the will of the testator, this Court cannot order the same to be given up; but it being consonant to equity that the parties should stand in such a situation as if the said codicil could be delivered up, the Court doth declare, that so much of the said codicil as does not constitute the will of the testator is void, and that the devise to the heirs of the body of the testator, contained in his said codicil

¹ This verdict was signed by each of the jury.

ought not to take effect; And doth decree the same accordingly; And it is ordered that the defendant S. H. be restrained from setting up any title at law to the several estates so devised to the heirs of the body of the testator, contained in the said codicil, and in question in these causes. 2 Seton Dec. (Eng. ed. 1862) 993, 994.

SECTION IV.

RECEIVERS.

1. APPOINTMENT OF RECEIVERS.

(a.) *Order for Receiver of real and personal estate.*

Let a proper person be appointed to receive [or, let A., of, &c., upon his giving security, be appointed to receive] the rents and profits of the real [freehold and (or) leasehold] estates [if so, and to collect and get in the outstanding personal estate] of B., the testator [or, intestate], in the bill [or, pleadings] named [or, the rents and profits of the real, &c., estates comprised in the indenture dated, &c., in the bill, &c., mentioned]; And the tenants of the said real [freehold and (or) leasehold] estates are to attorn and pay their rents in arrear and growing rents to such Receiver; (And let the defendants C. and D., the executors of the will of the testator, [or, administrators of the * 2340 * effects of the intestate], deliver over to such Receiver, all securities in their hands for such outstanding personal estate, together with all books and papers relating thereto); And let such Receiver from time to time pass his accounts, and pay the balances which shall be certified to be due from him into, &c., to the credit of this cause; And let such balances, when so paid in, be laid out, &c. 2 Seton Dec. (Eng. ed. 1862) 1002.

(b.) *Recognizance by a Receiver and his sureties, pursuant to a decree or order. [English Form.]*

L. M. [*the principal*], of, &c., C. D., of, &c., and E. F., of, &c. [*the sureties*], before our Sovereign Lady, the Queen, in her High Court of Chancery personally appearing, do acknowledge themselves, and each of them doth acknowledge himself, to owe the Right Honorable John Lord Romilly, the Master of the Rolls, and the Right Honorable Sir John Stuart, knight, the Senior Vice-Chancellor of the said Court, the sum of £____, of good and lawful money of Great Britain; to be paid to the said John Lord Romilly, and Sir John Stuart, or one of them, or the executors or administrators of them, or one of them; and unless they do pay the same, they, the said L. M., C. D., and E. F., are willing and do grant, and each of them is willing and doth grant, for himself, his heirs, executors, and administrators, that the said sum of £____ shall be levied, recovered, and received, of and from them and each of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods, and chattels of them and each

of them, wheresoever the same shall or may be found. Witness our said Sovereign Lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, at Westminster, the — day of —, in the — year of her reign, and in the year of our Lord 18—.

Whereas by a decree [*or, order*] of the High Court of Chancery, made by his Lordship the Master of the Rolls [*or, his Honor the Vice-Chancellor —*], in a cause wherein A. B. [and another, *or, others* are plaintiffs — *or*] is plaintiff, and C. D. [and another, *or, others* are defendants — *or*] is defendant (18—, B. No. —), — *or*, in a certain matter there depending intituled, "In the matter of —," and dated the — day of —, 18—, it was ordered [*recite so much of the decree or order as directs a proper person to be appointed, or that the person therein named be appointed, on giving security, as thus:*] that a proper person should be appointed to receive [*or, that the above bounden L. M., on first giving security, should be appointed Receiver of*] the rents and profits of the real estate, and to collect and get in the outstanding personal estate of A. B., the testator in the bill named ;

And whereas the Judge to whose Court the said cause is attached * hath [*if the Receiver has not been approved by the decree or order, add :*] approved of the said L. M. as a proper person to be such receiver, and hath approved of the above bounden C. D. and E. F., as sureties for the said L. M.; and hath also approved of the above-written recognition, with the under-written condition, as a proper security to be entered into by the said L. M., C. D., and E. F., pursuant to the said decree [*or, order*], and the General Orders of the said Court in that behalf; and in testimony of such approbation, the chief clerk of the said Judge hath signed an allowance in the margin hereof;

Now the condition of the above-written recognition is such, that if the said L. M. do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate, of the said A. B., at such periods as the said Judge shall appoint; and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or Judge hath directed, or shall hereafter direct, then the above recognition shall be void, and of none effect; otherwise, the same is to be and remain in full force and virtue.

L. M. } Taken and acknowledged by the above-named L. M., C. D.,
C. D. } and E. F., at —, in the (county) of —, this — day of
E. F. } —, 18—.

Before me.

[Signature of officer or commissioner by whom the recognizance is taken.]

(Short title.)

The Master of the Rolls [or, Vice-Chancellor], the Judge to whose Court this cause [or, matter] is attached, has approved of and allowed this recognizance.

R. M., Chief Clerk.

(c.) *Recognizance by a Receiver and his sureties, before an order to approve or appoint has been made.*

Proceed as in next preceding number to the first whereas; and continue thus: Whereas his Lordship the Master of the Rolls [or, his Honor the Vice-Chancellor —], on an application lately made to him at Chambers, in a cause now pending in the High Court of Chancery, wherein G. H. [and another, or, others — are plaintiffs — or,] is plaintiff, and J. K. [and another — or, others — are defendants — or,] is defendant [or, in a certain matter now pending in the High Court of Chancery, intituled, "In the matter of —"], hath approved of the above bounden L. M., on his giving security, as a proper person to be appointed to receive [state what], as thus: the rents and profits of the real estate, and to collect and get in the outstanding personal estate of A. B., * 2342 the *testator in the plaintiff's bill named], and hath approved of the above bounden C. D. and E. F., as sureties for the said L. M., and hath also approved of the above written-recognizance, with the under-written condition, as a proper security to be entered into by the said L. M., C. D., and E. F., pursuant to the General Orders. [Continue as in next preceding number to the end.]

(d.) *Another form of Recognizance or Receiver's Bond. (New York.)*

Know all men by these presents, that we, A. B., and C. D., all of the city, county, and State of New York, are held and firmly bound to the people of the State of New York, in the sum of — dollars, lawful money of the United States of America, to be paid to the said people; for which payment we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated the — day of —, in the year of our Lord one thousand eight hundred and —.

Whereas, by an order of the Court of Chancery for the State of New York, made on the — day of —, 18—, in a certain cause therein depending, wherein L. M. is plaintiff, and N. O. defendant, the above-named A. B. was appointed Receiver of all and singular the rents, issues, and profits of the real estates in question in this cause [if personal estate, add; —] and of the produce, interest, and avails of the personal estate in question in this cause.

Now the condition of this obligation is such, that if the said A. B. shall well and faithfully perform the trust and office of Receiver of the estate in question in the above cause, and shall account to the Court of

Chancery for the State of New York, according to law, then this obligation to be void; else to remain in full force and virtue.

A. B.
C. D.

Signed, sealed, and delivered
in the presence of G. H. and S. J.

(e.) *Another Form.*

In *Chapin v. Mann*, Suffolk Co., Mass., 1867, a Receiver's bond was given to "G. C. W., Clerk of the Supreme Judicial Court," in the common form of obligation, conditioned substantially as follows: Whereas, J. B. D. has this day been appointed by decree of the Supreme Judicial Court as Receiver of the property and effects of the late partnership existing between J. L. C. and A. M., having their usual place of business in Boston, and carried on under the name and style of "Dr. C. A. S. & Co.;"

* Now if the said J. B. D. shall well and truly do and perform all such things as are ordered to be done by him in said decree appointing him Receiver, and shall duly account for and pay over what he shall so receive, as hereafter said Court shall direct, then this obligation shall be void and of no effect; otherwise shall remain in full force and virtue. * 2343

J. B. D. (L. s.)
B. F. B. (L. s.)
W. D. M. (L. s.)
H. R. (L. s.)

October 24, 1867.

I hereby approve this bond.

G. C. W., Clerk.

(f.) *Recognizance of a Receiver of a Banking Corporation.*

Commonwealth of Massachusetts.

Suffolk, ss. } Supreme Judicial Court.
In Equity, }

Commonwealth *v.* Newburyport Bank.

Be it remembered, that on this — day of —, A. D. eighteen hundred and —, before me, G. C. W., Clerk of said Court, duly authorized by a decree of said Court [made in said cause], personally appeared H. W. K., of N., in the County of —, Esquire, as principal, and B. W., of —, in said County of S., gentleman, as surety, and acknowledged themselves to be jointly and severally indebted to the Commonwealth of Massachusetts, in the sum of —, to be levied upon their goods or chattels, lands or tenements, and in want thereof upon their bodies, to the use of the said Commonwealth, if default be made in the performance of the condition hereunder written.

The condition of this recognizance is, that whereas the above-named H. W. K. has been duly appointed by a decree of said Court, passed on the — day of —, current, a Receiver of the property and effects of

the Newburyport Bank, a Banking Corporation in the town of N., aforesaid, as by said decree on file appears;

Now, therefore, if the above bounden H. W. K., shall faithfully perform all his duties as Receiver of said Banking Corporation [under said last-named decree, and shall duly account for whatever may come to his hands in his said capacity, and pay over the same or the proceeds thereof, as he may hereafter be directed by said Court], then the above written recognizance to be void: otherwise to abide in full force, power, and virtue.

G. C. W., Clerk.

* 2344 * (g.) *Receiver to give sheriff statement of property he claims.*

Let P., the Receiver appointed in this cause, within (seven) days after notice hereof, deliver to the sheriff of S. a statement in writing, specifying what part of the goods and chattels now in the possession of the said sheriff the said Receiver claims, as the property of K., the testator in, &c., named; And let the sheriff withdraw from the possession of such parts of said goods and chattels as the Receiver shall so specify. (1856) 2 Seton Dec. (Eng. ed. 1862) 1002.

(h.) *Separate accounts of rents and personality; investment.*

And let such Receiver keep separate accounts of the said rents and profits, and of the said personal estate, and from time to time pass his accounts and pay the respective balances which shall be certified to be due from him into the, &c., to separate accounts to be entitled, &c.; And let such balances when, &c., be laid out, &c. 2 Seton Dec. (Eng. ed. 1862) 1002.

(i.) *Receiver continued at the hearing.*

Let the Receiver appointed in this cause pursuant to [or, by] the order dated, &c., be continued; And let him [keep down the interest on the mortgages therein mentioned and] pass his accounts and pay his balances as thereby directed. (1848) 2 Seton Dec. (Eng. ed. 1862) 1003.

2. MANAGEMENT OF ESTATES.

Receiver to repair buildings.

Let the works and repairs on the farm in the occupation of, &c., at, &c., mentioned in the affidavit of, &c., be done and executed by, &c., according to the specifications and estimates contained in the exhibits K. and L. in the said affidavit referred to; And let the said works and repairs be done and executed under the direction and superintendence of the defendant T., the Receiver of the rents and profits of the trust estates in question in these causes; And let, upon the said works and repairs being certified to have been properly executed, according to the said several specifications and estimates, the said receiver be at liberty

to pay to the said, &c., the sum of \$____, and be allowed the same on passing his accounts; And let timber of the value of \$____ be taken off the said trust estates for the said repairs and works. *Thellusson v. Woodford* (1855), 2 Seton Dec. (Eng. ed. 1862) 1014.

* 3. ACCOUNT AND PAYMENT.

* 2345

(a.) *Order for Receiver to bring in accounts.*

"Let C., the Receiver appointed in these causes, on or before the ____ day of ____ [or, within ____ days after service of this order], leave in the Chambers of the Judge his (5th) account as such Receiver, pursuant to the order dated, &c., and on or before the ____ day of ____, leave in said Chambers his (6th) account as such Receiver." Receiver to pay costs of application. *Cave v. Cave*, (1860) 2 Seton Dec. (Eng. ed. 1862) 1018.

(b.) *Putting recognizance in suit.*

Let the plaintiffs [and the defendant C., the trustees of the will of E. P., the testator in, &c.] be at liberty to put in suit the recognizance entered into by B., the late Receiver in these causes, together with D. and E., his sureties, dated, &c. 2 Seton Dec. (Eng. ed. 1862) 1019.

4. DISCHARGE OF RECEIVER.

Discharge and payment.

Let A., the Receiver of, &c., appointed by the order dated, &c., be discharged; And let him pass his final account, and pay the balance which shall be certified to be due from him into the, &c., to the credit of, &c., [or, to (the plaintiff) B., or, &c.]; And thereupon, let the recognizance, dated, &c., entered into by the said A., together with C. and D., his sureties, be vacated.

5. RECEIVER AND MANAGER OF TESTATOR'S BUSINESS.

"Let a proper person be appointed to collect, get in, and receive the debts now due and outstanding, belonging to the trade or business in the pleadings mentioned, carried on by the testator, and since by the defendants M. & C., and by the defendant M., and out of the first moneys to be received to pay the debts due from the said trade or business, and to manage the same, until the sale thereof." — "And let the plaintiffs and defendants deliver over to such person all the stock in trade, goods, effects, books, and accounts belonging to the said business." — Directions to pass accounts and pay in balances. 2 Seton Dec. (Eng. ed. 1862) 1024.

* 6. RECEIVER TO PAY OFF OR KEEP DOWN CHARGES. * 2346

Annuities.

Let the Receiver appointed, &c., out of the rents and profits of the real estates of H., the testator in, &c., pay to the annuitants in his will

named the arrears now due (to them in respect) of their several annuities, as the same shall from time to time become due, at the times and in the manner in the said will mentioned; such payments to be allowed in his accounts. *Hopkins v. Walker* (1853), 2 Seton Dec. (Eng. ed. 1862) 1026.

7. RECEIVER OF PARTNERSHIP BUSINESS AND PREMISES.

(a.) *Receiver and manager of partnership business.*

"Let a proper person or persons be appointed, either jointly or separately, to collect, get in, and receive the debts now due and outstanding, and other assets, property, or effects, belonging to the said partnership business of, &c., at, &c., and out of the first moneys to be received to pay the debts due from the said business, and to manage the same, so far as relates to any contract subsisting on the — day of —, and either of the parties is to be at liberty to propose himself as such receiver and manager to act without salary; And let the plaintiff and defendant deliver over to the person or persons so to be appointed all the stock in trade and effects of the said partnership, and also all securities in their, or either of their, hands, for such outstanding partnership estate, together with all books and papers relating thereto." — Directions that all the partnership property and effects, other than stock in trade, and the good-will of the partnership, be sold, either as a going concern, or otherwise as the Court shall direct, and either of the parties, not having the conduct of such sale, to be at liberty to bid; Liberty to apply in Chambers as to the payment of any liabilities of the partnership prior to the appointment of such Receiver and manager, or Receivers and managers; usual directions to pass accounts, and pay balances into, &c., to be laid out. *Pilling v. Pilling* (1861), 2 Seton Dec. (Eng. ed. 1862) 1031.

*2347 * (b.) *The like, pending petition to annul proceedings under one petition in Insolvency, and to obtain an order to issue a warrant on another.*

E—, ss.

S. J. C.

G. T. L. et al. Pet. v. G. F. C. et al. Resp.

And now on this — day of —, after hearing the parties by their respective counsel, it is ordered, adjudged, and decreed that A. H., Esquire, of S., in the County of E., be, and he hereby is, appointed Receiver of the estates, property, moneys, debts, and effects, real and personal, of the firm of W. & L., and of the estates, property, money, debts, and effects, real and personal, of the firm of B. P. W. & Co., and of the estates, property, moneys, debts, and effects, real and personal, of B. P. W., and of the estates, property, moneys, debts, and effects, real and personal, of said G. T. L., to take charge of all and singular thereof, and collect all outstanding debts due, owing, or payable to either of said firms, or to said B. P. W., or to said G. T. L., with full power to compound for any of said debts, taking less for the whole,

whenever said Receiver shall think it best for the interest of all concerned so to do, and upon such terms as said Receiver shall judge expedient, all such compromises to be sanctioned by this Court before the same are carried into effect with power to prosecute and defend in the name of either of said firms, or of said B. P. W., or of said G. T. L., or in his own name as Receiver, all such suits as he shall deem expedient; also to sell and dispose of for cash or on credit, at public auction or at private sale, all or any of the estates, debts, and effects aforesaid, except moneys, if and whenever and upon such terms as said Receiver shall think for the interest of all concerned; also with full power to submit to arbitration any dispute or controversy in regard to any debt due or claimed to be due to said firms or either of them, or to said B. P. W., or G. T. L.; also with full power to redeem from any mortgage, pledge, lien, or claim thereon any of the estates, property, debts, or effects aforesaid, and to use for that purpose any funds in his hands that may belong to the firm or separate estate as the case may be, that such incumbered property may belong to.

And said Receiver has liberty to employ all such servants and agents under him, whether members of said firm or otherwise, as he shall deem useful and expedient in the getting in, sale, collection, manufacture, or disposal of said property, estate, debts, and effects, and to pay them a proper and reasonable compensation for their services out of the proceeds thereof. And said Receiver is also empowered, if he shall think it expedient so to do, to finish and complete the manufacture of any part or portion of the property aforesaid that may be partially manufactured or in process of manufacture, and to defray the cost and expenses * thereof out of the proceeds of the property, estate * 2348 debts, and effects of the firm or individual to whom such partially manufactured property or property in process of manufacture belongs.

And the said B. P. W. and G. T. L. and W. R. W. and P. E. D., the Messenger, are hereby required and ordered to deliver to said Receiver, all and singular, the stock, merchandise, moneys, property, debts, and effects of said firms, or either of them, or of said W. B. P. or of said G. T. L., in the hands, possession, or control of them, or either of them, with all the books, deeds, writings, documents, vouchers, and papers relating thereto, or relating to any part or portion thereof; and each of them, the said B. P. W., G. T. L., W. R. W., and D., are restrained and enjoined from collecting any of the debts aforesaid, and from using, spending, injuring, conveying away, transferring, selling, or in any manner disposing of or incumbering any of the estates, property, debts, effects, books, deeds, writings, documents, vouchers, or papers aforesaid, except to deliver them into the hands of said Receiver. And said W. B. P. and G. T. L. and W. R. W., and each of them, are hereby required to make, execute, acknowledge, and deliver to said Receiver any and all conveyances, instruments, and transfers in writing, if any, which said Receiver shall reasonably be advised to be necessary or proper to more effectually vest in him any part of the estates, property, debts, and effects aforesaid. And said Receiver shall be entitled to retain out of the proceeds of said estates, property, debts, and effects

aforesaid a reasonable compensation, to be determined by the Court for his services and expenses.

And said Receiver is required to hold all the estates, property, debts, and effects aforesaid, or the proceeds thereof, except such as shall have been disposed of pursuant to this decree, also all the books, writings, documents, vouchers, and papers aforesaid, subject to the order and direction of the Court. And said Receiver is required to file in the office of said clerk, within three months from the date of this decree, under oath, a true account of all his receipts and disbursements as such Receiver.

And either of the parties or said Receiver may apply from time to time to the Court for further direction as occasion may require. It is also ordered that a writ of injunction issue against said B. P. W., G. T. L., W. R. W., and D., conformably to this decree, and that said W. R. W. be by said injunction also restrained and enjoined from using, spending, injuring, conveying away, transferring, selling, or in any manner disposing of or incumbering any part of his separate estate, property, debts, or effects, real or personal, or any of the books, deeds, writings, documents, vouchers, or papers relating thereto, until the further order of this Court, and except as hereafter directed or allowed by this Court.

* 2349 * (c.) *Order of Court on request by Receiver for authority to compromise notes and accounts.*

At Chambers in B., June 17, 1862.

On the foregoing petition it is ordered, that free authority be given to the Receiver in the above-entitled case to compromise and compound, and take part in payment, of all such notes, debts, and demands, due to the parties, whose estate and property are now in his hands as Receiver, on such terms and conditions as he may think expedient; the said Receiver keeping an account of the notes, debts, and demands, which may be compromised and compounded by him under this order, and making report thereof to this Court.

It is also ordered that said Receiver pay to the messenger, appointed under the insolvent proceedings, such sum as may be due to him, for services and expenses; the same to be paid out of any funds in his hands belonging to said estate.

G. T. B.,
Ch. Jus. Sup. J. C.

(d.) *Acceptance and approval of Receiver's account.*

E—, ss. }
S. J. C. }

G. T. L. & als., Pet. v. G. F. C. & als., Resp.

On the account rendered in the above cause by A. H., Esquire, the Receiver appointed therein, it is ordered, adjudged, and decreed by the Court, that said account be, and the same is, hereby accepted and

approved, and that said A. H. be allowed for his services as such Receiver the sum of \$— out of the moneys in his hands as such Receiver, and that all the goods, wares, merchandise, *chooses in action*, property, estates, effects, moneys, deeds, documents, vouchers, writings, papers, and books of account in his hands or possession, or under his control, as such Receiver, after the retention by him out of said moneys of the sum so allowed him, be delivered and passed over by him into the hands and possession of such person or persons as shall be appointed assignees in insolvency of the joint and separate estates of B. P. W., G. T. L., and W. R. W., copartners under the firm of W. & L., and said Receiver is hereby ordered and directed to deliver and pass over the same accordingly, and make return thereof to this Court within ninety days from the date hereof. *Lancaster v. Choate, Essex Co., Mass., 1863, 5 Allen, 530.*

By the Court.

Attest, A. H.

<p>* D. S. v. The Columbia Ins. Co. and H. E.</p>	}	<p>S. J. C. S—, ss. March T., 1857.</p>	<p>* 2350</p>
<p>In Equity.</p>			

(e) *Order for the appointment of Receiver, in a suit by a creditor against a foreign insurance company and their agent in Massachusetts having in his hands property which could not be come at to be attached, under the statute of Massachusetts.*

Whereas it has been made to appear to this Court by the report of G. S. H., to whom this cause was referred as Master, that there are now in the hands and possession of H. E. one of said respondent's promissory notes to the amount of \$—, accounts to the amount of \$—, and money to the amount of \$—, belonging to the said Columbia Insurance Company, over and above all claims or liens which the said H. E. has against said company or their property in his hands. And whereas it has been made to appear that it is necessary that some fit and proper person should be appointed to receive and hold said promissory notes, accounts, and money, until the further order of this Court, with authority also to collect and compromise said notes and accounts, according to his best judgment and discretion;

It is ordered that E. M. be, and hereby is, appointed a Receiver, to receive and hold said promissory notes, accounts, and money; and the said E. M. is hereby authorized to collect said notes and accounts, and to receive less than the full amounts due thereon, whenever the full amounts in his best judgment are not collectible, subject in all cases to the approval of the Court; and to surrender up said notes, and to give receipts for the payment of said accounts upon the payment thereof, in whole or in part as aforesaid.

And the said E. M. is to retain said funds, promissory notes, and accounts, or the proceeds thereof, and to account for and pay over the same as this Court shall hereafter order and direct.

And the said H. E. is hereby ordered and directed forthwith to deliver and pay to said E. M., Receiver as aforesaid, the promissory notes, accounts, and funds aforesaid, and all books and papers in his possession or under his control relating thereto.

By order of G. T. B., Esq., one of the Justices of said S. J. C.

(Signed)

G. C. W., Clerk.

Oct. 24, 1857.

* 2351 * D. S.
 v.
 The Columbia Ins. Co. } Sup. J. Court,
 and
 H. E. } March T., 1857.
 In Equity.

(f.) Decree discharging said H. E., in the above case, upon his paying the amount reported in his hands to the Receiver.

Whereas this cause was referred on the twenty-seventh day of April, A. D. 1857, to G. S. H., Esq., as Master, to ascertain and report what amount of funds, promissory notes, or other *chooses in action* belonging to said Columbia Insurance Company were in the hands of H. E., the other respondent, and what liens, if any, the said H. E. had upon the same, as will more fully appear by a reference to said order; and whereas said G. S. H., in pursuance of said order, has now made his report to this Court, wherein and whereby it appears that there are now in the hands of said H. E. promissory notes belonging to said Columbia Insurance Company to the amount of \$____, accounts to the amount of \$____, and cash to the amount of \$____, and that the said H. E. has a lien thereon for the following claims, namely : [stating them].

Making in all the sum of \$____.

Now it is hereby ordered and decreed, that the said H. E. deliver to E. M., Esq., who has been appointed Receiver in this case, the said promissory notes and accounts, and all books, papers, and vouchers relating to the same, and also that the said H. E. pay to said Receiver the sum of \$____, being the balance of cash in his hands, after deducting the amount of his claims and liens as aforesaid; and also if the said H. E. is not held to pay the two said notes of \$120 and \$90, as aforesaid, then that said H. E. pay to said Receiver the additional sum of two hundred and ten dollars (\$210).

And after compliance by the said H. E. with each and every one of the terms of this order, it is ordered and decreed that the said H. E. be forever discharged from all liability to account to the plaintiff, or to said Columbia Insurance Company, or to any other person or corpora-

tion, for said funds, promissory notes, or accounts, as aforesaid; and that as against the said H. E. this bill be dismissed.

By order of G. T. B., Esq.,

One of the Justices, &c.,

G. C. W., Clerk.

Oct. 24, 1857.

* (g.) *Order of reference to a Master to report the amount to be allowed as compensation to Receiver, and the balance remaining in his hands.* * 2352

It is ordered that this cause be referred to G. S. H., Esq., as Master, to examine the Report of E. M., Esq., Receiver, and to report what sum shall be allowed the Receiver for his services in said case, and what balance remains in his hands, subject to the further order of this Court in favor of the creditors of said Columbia Insurance Company. And the said Master is ordered to give D. S., the plaintiff, as well as said Receiver, notice of the time and place of the hearing before him.

By order of C. A. D., Esq.,

One of the Justices, &c.,

G. C. W., Clerk.

Jan. 23, 1861.

(h.) *Order on Receiver to pay out of funds in his hands the taxable costs of suit, and the balance to the plaintiff on account of his claim.*

This cause having been referred to G. S. H., Esq., as Master, to examine the accounts of E. M., Esq., the Receiver, and to report what balance remains in his hands subject to the final decree of the Court, and it now appearing from said report that there is in the hands of said Receiver the sum of \$—, subject to the order of this Court, and also that there are two outstanding claims in favor of said Receiver and uncollected, one of which is against one T. H. H., and the other against one J. H. P.; it is hereby ordered and decreed, that the Receiver pay from the funds in his hands the taxable costs of this case, taxed by the Court at one hundred and thirty-three dollars and $\frac{48}{100}$ (\$133.46), and that the balance remaining thereafter, namely, the sum of \$—, be paid by him to D. S., the plaintiff, on account of his claim against the said Columbia Insurance Company, on the said D. S. filing a receipt therefor with the record in this case; and that this shall stand as the final decree in this case, unless the said Receiver shall hereafter receive anything on account of the claims aforesaid, in which case he shall be at liberty to apply to the Court for further directions.

By the Court,

May 20, 1861.

G. C. W., Clerk.

2321

Receiver of property in Italy, with leave to appoint agent there, to litigate rights.

Let B. M., of, &c., be appointed to collect and get in the outstanding personal estate and effects of the testator, and to receive the rents and profits of his real estate in Italy, and any money that may arise from the sale of his real estate in Italy. — “ And let such Receiver, with the approbation of, &c., if expedient, appoint a proper person as his agent, living at or near L., or elsewhere in Italy, to collect the said rents and profits, and to receive and get in the (personal) estate and effects of the testator, and to see the same properly secured and transmitted to, &c., to be disposed of as this Court shall direct, and, if necessary, to continue the suit now instituted, and to litigate and contest any other suit which may arise (concerning), or have relation to, the testator’s estate in Italy; And let, if necessary, a proper instrument be executed by the defendant, to such person so to be appointed, for the purposes above mentioned, such instrument to be approved of by — Judge” [or, Court]. — Plaintiff and defendant to deliver over to Receiver all securities, books, and papers; and he to pass accounts, and pay in balances. Hinton v. Galli (1854), 2 Seton Dec. (Eng. ed. 1862) 1039.

SECTION V.

PRODUCTION AND DISCOVERY.

1. PRODUCTION AND INSPECTION OF DOCUMENTS.

(a.) *To deposit in Court documents admitted by answer.*

It is ordered that the defendant A., within (seven) days after service of this order, produce and leave with the clerk, &c., the several documents mentioned in the answer of the said defendant filed the — day of —, and in the — schedule thereto, and admitted to be in his possession or power, with liberty for the plaintiff, his solicitors and agents, to inspect and peruse the same, and take copies and abstracts thereof, and extracts therefrom, as he shall be advised, at his expense. And the clerk, &c., is to produce the same upon any examination of witnesses in this cause, and at the hearing thereof, as the plaintiff shall require.

* 2354 * (b.) *For inspection thereof out of Court (with leave to seal up).*

It is ordered that the plaintiff, his solicitors and agents, be at liberty at all seasonable times, upon giving reasonable notice, to inspect at the office of — [usually the defendant’s solicitors], situate at —, the several documents mentioned in the answer of the defendant A., filed the — day of —, and in the schedule thereto, and admitted to be in his possession or power, and to take copies and abstracts thereof,

and extracts therefrom, as he shall be advised, at his expense; [but previously to the said inspection, the said defendant is to be at liberty to seal up such parts of the said documents as according to an affidavit to be made by him do not relate to the matters in question in this cause]; And it is ordered that the said defendant produce the said document upon any examination of witnesses in this cause, and at the hearing thereof, as the plaintiff shall require. 2 Seton Dec. (Eng. ed. 1862) 1040. [See *Reed v. Stevenson*, 6 W. N. 163.]

2. DELIVERY OUT OF DOCUMENTS.

(a.) *To a party or purchaser.*

It is ordered that (such of) the several documents deposited by, &c., with the clerk, &c., pursuant to the order dated, &c. (as relate to, &c., or are mentioned in the schedule hereto), be delivered out to the plaintiff [or, defendant] A. [or to B., the purchaser of the (estate comprised in lot —, part of the) real estates of C., the testator in the pleadings named].

(b.) *To a party's solicitor to be produced in evidence.*

(*By consent.*) It is ordered that the documents deposited by the defendants with the, &c., be delivered out to Mr. —, the defendant's solicitor, for the purpose of producing the same before the (special) Examiner appointed to examine witnesses in this cause in the country, the said Mr. — undertaking to re-deposit the same within a week after the examination is closed. Plaintiff to be at liberty to inspect the documents meanwhile. 2 Seton Dec. (Eng. ed. 1862) 1062.

* SECTION VI.

* 2355

DECREES PRO CONFESSO.

(a.) *Where defendant does not appear at the hearing.*

This cause coming on, &c., in the presence of counsel for the plaintiff [*if there are defendants who appear, add and for the defendants A. and B.*]; And whereas, &c. [*recite shortly the proceedings for obtaining the appearance of the defendant*]: and upon reading the plaintiff's bill duly, &c.; and upon hearing what was alleged by the counsel for the plaintiff [*and for the defendants A. and B.*], this Court, &c., doth order that the plaintiff's bill be taken *pro confesso* against the said defendant C. And doth order and decree, &c.

(b.) *Another form.*

This cause coming on to be heard in the presence of counsel for the plaintiff, and it appearing to the Court that the *subpœna* issued in the cause was duly served upon the defendant, and that the time for appearance by the defendant has long since expired and no appearance has

been entered, on motion of the counsel for the plaintiff, it is ordered that the bill of complaint in the cause be and the same is hereby taken as confessed by the defendant; and the Court doth thereupon further order [or declare], &c.

(c.) *Where defendant appears and waives objections.*

This cause, &c.; And the defendant C. now appearing by counsel, and waiving all objections to the order, dated the — day of — [preliminary order], and praying to be heard to argue the case upon the merits stated in the bill; This Court, &c. 2 Seton Dec. (Eng. ed. 1862) 1128.

SECTION VII.

1. DISMISSAL AT THE HEARING.

(a.) *Dismissal of bill.*

This cause coming on, &c., this Court doth order, that the plaintiff's bill do stand dismissed out of this Court [*if there are other defendants who do not appear, or if dismissed against one of several defendants, as against the defendant B.*], with costs to be paid by the plaintiff A. to the said defendant B.; And to be taxed by the, &c. [*in case the parties differ*].

* 2356

* (b.) *As to part of the bill.*

This Court doth order that so much of the plaintiff's bill as seeks, &c., do stand dismissed out of this Court, with costs, &c.; And as to the rest of the relief sought by the plaintiff's bill, &c.; It is ordered, &c.

(c.) *With costs as to some defendants, and without costs as to others.*

This Court doth order that the plaintiffs' bill stand dismissed out of this Court, without costs, as against the defendants A., B., &c., and with costs as against the defendants D., E., &c., such costs to be taxed, &c., and paid by the plaintiffs [*names*] to the said defendants D., E., &c.

(d.) *Where plaintiff does not appear.*

This cause coming on this day to be heard before this Court, &c. [*if set down by defendant, at the request of the defendant*], in the presence of counsel learned for the defendant, no one attending for the plaintiff, although the plaintiff has been served [*or, although the plaintiff has been duly served*] with a *subpœna* to hear judgment in this cause [*at the request of the defendant*], as by affidavit [*now produced*] appears, and upon hearing what was alleged by the counsel for the defendant, and upon reading the said affidavit, &c.; This court doth order, that the plaintiff's bill do stand dismissed out of this Court with costs, &c.

(e.) Dismissal with costs, reasons stated.¹

The bill charging the defendants with combining and confederating to wrong and defraud the plaintiffs, as assignees of the estate of the said Joseph Winsor, by making unjust claims against said insolvent, and obtaining payments by preferences, contrary to the provisions of the insolvent laws of Massachusetts, all the material allegations thereof being denied, the evidence of the respective parties being duly taken and published, and the cause brought to hearing, and having been fully argued by counsel; it is considered, adjudged, and decreed by the Court here, that the claims and demands set up by the defendants in their respective answers, as due from said insolvent, were just and true claims and demands, and that the payment thereof at the times and in the manner set forth in said answers, and as proved, was not made in violation of the said insolvent laws; and thereupon the said bill, after full hearing upon the merits of the cause, is adjudged and decreed by the Court to be dismissed with costs for the defendants. *Bigelow v. Winsor*, 1 Gray, 300.

(f.) Dismissal without prejudice ; reasons stated.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, * adjudged, and decreed by the Court, that the plaintiff is entitled to no specific lien or security upon either of the vessels mentioned in the plaintiff's bill, and has no equity to be relieved in respect thereof, and that his bill be dismissed with costs to the defendants, without prejudice to his right to come in and receive a dividend of the said R.'s estate, in common with the other creditors of the said estate. [Hunt v. Rousmanier, 3 Mason, 307.] * 2357

(g.) Dismissal on case agreed.

"This cause having been submitted upon a case agreed by the parties, and upon the arguments of counsel thereon, as well on the part of the defendants as of the plaintiffs, and due deliberation thereupon had, and it appearing that the plaintiffs are not entitled to the personal estate, either of the late Sir William Pulteney, or of the late Countess of Bath, in the pleadings mentioned, in exoneration of the land from the mortgage debt in question; It is thereupon ordered, &c., that the plaintiffs' bill be dismissed, and that no costs be charged by either party as against the other."

(h.) Dismissal ; reasons stated; costs; without prejudice to right to bring another suit.

"It is declared, that nothing appears to impeach the consideration, or validity of the judgment in the pleadings mentioned, in favor of the defendant H., nor his right and title to the proceeds of the per-

¹ See form of such decree in *Troy Iron and Nail Factory v. Corning*, 1 Blatch. 474, 475.

sonal estate of the G. Manuf. Co., sold under his execution, and paid to him, nor his right and title to collect the residue of the judgment by the means provided by Law; and that the G. Manuf. Co., as well as other debtors, were authorized to give preferences among creditors for a debt justly due. It is therefore ordered, &c., that the bill as to the defendant H. be dismissed, with costs. And it is further declared, that the plaintiffs were not entitled, at the time of filing their bill, to question, in this Court, the dispositions of their personal property, inasmuch as, at the time of filing their bill, they had not acquired a lien at Law upon the real estate, as judgment creditors, nor have they, as yet, acquired, as execution creditors, a legal preference to the personal property, by means of an execution duly issued and levied or returned, nor shown that they cannot obtain satisfaction of their debt by having tried in vain the ordinary process of such execution at Law. And it is further declared, that though the defendants, who are trustees of the said company, and purchased in the personal property of the said company, under the execution of the defendant H., may be liable to have that property redeemed and resold, for the benefit of the creditors seeking the same, after deducting the price they gave, and the just expenses incurred thereon; yet none but an execution creditor * 2358 at Law * is entitled to ask for such assistance from this Court in respect to the personal estate. It is thereupon further ordered, &c., that the bill as to all the other defendants who have answered be dismissed without costs, and without prejudice to the right of the plaintiffs to bring a new suit for the purpose aforesaid in the proper character of judgment execution creditors."

(i.) *Dismissal framed to prevent prejudice.*

Supreme Court of United States.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of —, and was argued by counsel; on consideration whereof, this Court is of opinion that the decree of the Circuit Court ought to have shown that the bill was dismissed because the deed therein mentioned, being void at Law for matter apparent on its face, the plaintiff had not shown any circumstances which disclosed a case proper for the interference of a Court of Equity to relieve against such void deed. And this Court is further of opinion, that so much of the said decree as dismisses the bill with costs is erroneous, and ought to be reversed. This Court doth therefore reverse and annul the said decree, and direct that the case be remanded to the said Circuit Court with directions to modify the same according to the principles of this decree. 6 Peters, U. S. 100, 101.

SECTION VIII.

1. LEAVE TO ENTER DECREE NUNC PRO TUNC.

Upon motion, &c., who alleged that the time for entering the decree [or order] made in this cause, and dated on the — day of —, expired

on the — day of —; This Court doth order, that the said decree [or order] be entered *nunc pro tunc*.

2. REVIVOR AND SUPPLEMENT.

(a.) Order to revive. [English Form.]

Upon motion, &c., by counsel for the plaintiff, who alleged [*state the last material proceeding in the suit, and the subsequent events in concise form*], This Court doth order, that this suit, which has become abated in manner aforesaid, stand revived, and be in the same plight and condition as the same was in at time of the said abatement.

* (b.) Order to revive, on marriage of feme sole plaintiff.¹ * 2359

If no next friend required, It is ordered that the cause stand revived, at the suit of the said A. [*husband*], and the above-named plaintiff, now the wife of the said A., against all the defendants, and be in the same plight, &c. *If a next friend required*, It is ordered that this cause stand revived, at the suit of the above-named plaintiff, now the wife of B., by C., of, &c., her next friend, against all the defendants, and against the said B., and be in the same plight, &c.

(c.) Order to carry on suit against assignees of bankrupt or insolvent defendant.

It is ordered that this suit be carried on and prosecuted by the plaintiff against the said M., &c., as such assignees as aforesaid, as if the said defendant had not become bankrupt, &c. 2 Seton Dec. (Eng. ed. 1862) 1165.

(d.) Same; by committee [or guardian] of plaintiff, a lunatic, before decree.

It is ordered that A., the committee [or guardian] of the person and estate of the lunatic plaintiff B., be at liberty to carry on and prosecute this suit against the defendants C., &c., in the same manner as the plaintiff B. might have done if he had not so become a lunatic.

¹ *Griffin v. Morgan*, L. R. 4 Ch. 351, was a suit for administration, instituted in the name of three infants by their next friend. After this, one of them, a female, married before decree. The next friend and the other parties to the suit were unaware of the marriage, and she and her husband were unaware of the existence of the suit, until after a decree had been made. Vice-Chancellor Stuart declined to make an order of revivor, considering that the defect could not be remedied without a supplemental bill; but, the defendants consenting, an order of revivor was made by the Lords Justices, as follows: "The said T. H. [the husband], by his counsel, appearing, and submitting to be bound by the said decree, and the defendants, by their counsel, consenting,

order that this cause do stand revived at the suit of the said J. H. [the wife] and the other plaintiffs, all by the said J. G., their next friend, against the defendants and the said T. H., and that the said decree, and all proceedings thereunder, be carried on and prosecuted, between the plaintiffs and the defendants and the said T. H., and that the plaintiffs do have the same benefit of the said decree and of the proceedings thereunder against the defendants and the said T. H., as if, prior to the date of the said decree, an order to revive this cause had been duly obtained and served, and the said T. H. had been made a defendant, and had appeared on the hearing of the motion on which such decree was made."

3. DECREES, ON SUPPLEMENTAL BILL, TO CARRY ON PROCEEDINGS.

(a.) *Decree to carry on proceedings.*

It is ordered that the decree [or order], dated, &c., made in the original suit, wherein A. was plaintiff, and C. and D. were defendants, be carried into execution, and the accounts and inquiries, and * 2360 several * other matters thereby directed [and the several proceedings thereunder], be carried on and prosecuted between the parties to this suit, in like manner as thereby directed between the parties to the said original cause; And it is ordered that the further consideration of this cause be adjourned, in like manner as the further consideration of the said original cause was adjourned by the said decree [or order].

(b.) *Same; on supplemental bill in the nature of bill of revivor, though original decree was made after suit abated.*

This Court doth declare, that the plaintiffs are entitled to have the benefit of the proceedings which have been had in the original suit of H. v. P., and others, under the decree made in that suit, dated, &c., against the defendants in this suit, who are the executors of R., named as a defendant in the original suit, who died previously to the date of the said decree, as if previously to such decree (a bill had been filed against the executors of the said R., and) an order to revive the said suit had been duly obtained; And doth decree that the said suit and proceedings be carried on accordingly; And adjourn further consideration, &c., in like manner as, &c. 2 Seton Dec. (Eng. ed. 1862) 1175.

4. DISPENSING WITH, OR APPOINTING, A REPRESENTATIVE.

[Under 15 & 16 V. c. 86, § 44.]

(a.) *Order to carry on proceedings without a representative.*

Upon motion, &c., of counsel for all parties, and upon reading the order dated, &c., and an affidavit of, &c., whereby it appears that J. and H., two of the grandchildren of G., the testator in the (bill) named, are dead, and that there is no legal personal representative to either of them, this Court doth order, that the proceedings in this cause, and the inquiries and several other matters directed by the order dated, &c., be carried on and prosecuted, notwithstanding the absence of any person representing the respective estates of the said J. and H. Gladwin v. Gladwin (1853), 2 Seton Dec. (Eng. ed. 1862) 1178.

(b.) *Order appointing plaintiff to represent deceased plaintiffs.*

Upon motion, &c., of counsel for plaintiffs, and upon reading an affidavit of, &c., this Court doth order, that the plaintiff W. be appointed to represent the estates of the plaintiffs G. E., &c., respectively deceased, for the purposes of this suit. Vince v. Walsh (1853), 2 Seton Dec. (Eng. ed. 1862) 1178.

* 5. SALES UNDER DECREE OR ORDER.

* 2361

- (a.) *Order of sale under Insolvent Laws of Massachusetts; application of proceeds to incumbrances; balance of debts, if any, to be proved; surplus of proceeds, if any, to await further order.*

It is ordered, that the assignees of the said A. B. do, and they are hereby directed to sell the property and estate in the petition of C. D., and in the petition of E. F., mentioned and described, at public auction, at such time and places on or before the first day of December, 1849, as they may think most beneficial to the parties interested therein, first giving twenty days' notice of such sale, by publishing, &c., and the said D. & F., are required and enjoined to join with said assignees in a conveyance of said estate, so as to convey all their respective rights to, and interests therein; Also, that the proceeds thereof be applied, in the first instance, to the extinguishment of said C. D.'s debt in his said petition mentioned, so far as necessary therefor; and that said C. D. be allowed to prove, for such balance, if any, as may remain unpaid; but if a balance [surplus] of said proceeds remain, after payment of the amount of said C. D.'s claim, it is ordered, that said balance [surplus] be applied to the payment and extinguishment of the debt in favor of said E. F., the same being first to be proved and established, and that said E. F. be allowed to prove against said insolvent estate such balance, if any, of his debt, as may remain unpaid; But if any surplus remain of said proceeds, after making said payments, the same to be subject to such order in relation thereto as may hereafter be made. *Hunnewell v. Goodrich*, 3 Cush. 471, 472.

- (b.) *Order to pay off legal mortgagees from fund in Court, on their conveying.*

It is ordered, that, upon due execution by M. and S. of the respective conveyances to H. and L. of the real estate comprised in lots 1 and 2 [whereof the said H. and L. have been certified to be the purchasers by, &c., dated, &c., and which are] now in mortgage to the said M. and S., such execution to be verified by affidavit, &c., out of the \$—, the aggregate amount of the purchase-moneys for the said lots, and being part of the \$— cash in the, &c., to the credit of this cause, the sum of \$— appearing by the affidavit of, &c., to be due to the said M. S. for principal and interest on the security of the said real estate, and also subsequent interest on \$—, part thereof, at the rate, &c., from, &c., to the day of payment [the amount of such subsequent interest, and the total amount of principal and interest, to be verified by affidavit], be paid to the same M. and S.— Direction to tax their costs, and for payment thereof out of the cash in Court; Plaintiff to pay purchaser's costs of appearance, and be allowed them in the cause; and plaintiff's and defendant's costs to be costs in the cause. *Sutton v. Downing*, 2 Seton Dec. (Eng. ed. 1862) 1200.

* 2362 * (c.) *Decree for sale of real estate held as partnership property proceeds to discharge mortgages ; and residue to pay debts of copartnership and the copartnership balance to surviving partner, to whom copartnership was indebted ; different parcels sold separately; any party to be at liberty to bid ; separate accounts to be made of the proceeds of each parcel : confirming Master's report ; letting the purchasers into possession ; order nisi as to infants.*

"And it is further considered and adjudged by the Court that the said estate near B. street, as well as said estate on C. square and said estate on C. street, ought to be sold under the direction of the Court by a Master, and the proceeds brought into Court first to apply so much thereof as are necessary to discharge the mortgages thereon, and to apply the residue thereof to the discharge of the debts of the copartnership, and the copartnership balance that may be found due to the surviving partner. And the Court doth further order and decree that it be referred to G. T. C., Esquire, one of the Masters of this Court, to cause the said parcel of real estate in C. square, and the said parcel of real estate in C. street, and the said parcel of real estate near B. street, to be separately sold with the approbation of the said Master, at such times and places as he shall think fit, to the best purchaser or purchasers that can be got for the same, to be allowed of by the said Master, wherein all proper parties are to join as the said Master shall direct. And any of the parties are to be at liberty to bid at said sales for all or any of said estates. And it appearing to the Court that the said estates in C. square, and near B. street are incumbered by mortgages or other liens, the said Master is directed to keep and state his accounts, so that it may appear by his report what are the proceeds of each of said parcels of real estate." [Confirming Master's Report.] "The report of G. T. C., Esq., the Master to whom it was heretofore referred by a decree passed in this cause, to sell the three certain parcels of real estate, having come in and been filed in the clerk's office on the — day of this term, and no exception having been taken thereto; on motion of Mr. E., the plaintiff's solicitor, it is ordered and decreed that said report do stand confirmed, and that the said M. K. be allowed as the purchaser of said parcel of real estate in C. square, and of said estate near B. street; and said J. L. be allowed as the purchaser of said parcel of land in C. street, at the prices of said estates respectively reported by said Master as the highest bid therefor." [Final Decree.] "This cause came on to be further heard at this term for directions as to the final decree, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that the report of

G. T. C., Esq., the Master to whom it was referred to convey * 2363 the estates sold under the authority of a former * decree in this cause, which report was filed in the clerk's office on the — day of —, do stand confirmed; and the said M. K. be let into possession of the said estate on C. square, and the said estate near B. street; and said J. L. be let into possession of the said estate in C. street. And it is further ordered that the said defendants H. O. H. and S. S. H. re-

spectively do, as and when they shall respectively attain the age of twenty-one years, execute, acknowledge, and deliver sufficient deeds of release of the said estates in C. square, and near B. street, to said M. K., his heirs and assigns, and of the said estate in C. street to said J. L., his heirs and assigns, unless the said H. O. H. and S. S. H., respectively, shall within six months after they shall have respectively attained said age of twenty-one years" [on being served with *subpoena* to show cause against this decree] "show unto this Court good cause to the contrary, and in the mean time it is ordered that the said purchasers of said estates, and their respective heirs and assigns, do hold and enjoy the said estates by them respectively purchased, and to them respectively conveyed by said deeds of said Master."

(d.) *Order on plaintiff to pay money; defendant to release or cancel mortgage; in default of payment by plaintiff, sale; money to be paid into Court to credit of cause.*

This Court doth order and decree, that the plaintiff shall pay to the defendant the sum of \$____, with interest from the thirteenth day of June last, within two months from the first day of March now current, less such sums as may have been paid. And upon such payment it is ordered, that the defendant cause to be cancelled or released a mortgage deed on the premises given by him to one E. B. in the pleadings mentioned. And in default of the plaintiff's paying to the defendant what shall be found due as aforesaid, it is ordered that said estate, or a sufficient part thereof, be sold under the direction of one of the Masters of the Court, to the best purchaser or purchasers that can be got for the same, to be allowed of by the said Master, wherein all proper parties are to join as the Master shall direct.

And it is ordered, that the moneys arising from said sale be paid into Court to the credit of this cause, subject to the further order of this Court. And it is ordered that the same be applied in payment of what shall be found due to the defendant for principal and interest as aforesaid. And this Court doth reserve the consideration of all further directions until after said sale and payment. And any of the parties are to be at liberty to apply to the Court as occasion may require.

By the Court,

(Signed)

G. C. W., Clerk.

April 7, 1847.

* SECTION IX.

* 2364

EXECUTION OF DECREES AND ORDERS.

(a.) *Substituted service of decree or order.*

Whereas by the decree [or, order] dated, &c., it was ordered [recite so much of the decree or order as is required to be performed]; Now upon motion, &c., who alleged [state from affidavit to the effect] that the plaintiff hath been unable to serve the defendant A. with the said decree [or

order], although due diligence hath been used for that purpose, as by the affidavit of B., filed, &c., appears ; and upon reading the said decree [or order] and affidavit, This Court doth order, that service of the said decree [or order], dated, &c., upon —, at — [or, upon A. B., C. D., and E. F., members of the firm of Messrs. B., D., & F., of —, or one of them], be deemed good service on the defendant A. 2 Seton Dec. (Eng. ed. 1862) 1212.

(b.) *Order for sequestration on return of attachment. [English.]*

Whereas by the decree [or order], dated, &c., it was ordered [recite so much of the decree or order as is required to be performed] ; Now upon motion by counsel, &c., who alleged that an attachment issued against the defendant A., for his contempt in not, &c. [state the default in respect of which the attachment issued] directed to the sheriff of —, and that the said sheriff hath returned, that the said defendant is a prisoner in his custody [or, non est inventus thereof] ; and upon reading the said decree [or order], writ, and return thereon. This Court doth order that a sequestration do issue, directed to certain commissioners to be therein named, to sequester the said defendant A.'s personal estate, and the rents, profits, and issues of his real estate, until the said defendant shall [state the act required to be done] clear his contempt, and this Court doth make other order to the contrary. 2 Seton Dec. (Eng. ed. 1862) 1214.

(c.) *Order to turn over to prison.*

Where party brought up on attachment, or by habeas.

The defendant A. being this day brought to the bar of this Court by the, &c., attending this Court [or, if brought up by habeas, say, by virtue of a writ of *habeas corpus cum causis*, directed to the sheriff of —, or the keeper of the — prison], to answer his contempt in not, * 2365 &c. [state the default in respect of which the process issued], and * still persisting in his said contempt. It is upon motion, &c., ordered, that the said defendant A. be turned over to the, &c., prison, and do remain there until he shall, &c., [state what he is required to do] clear his contempt, and this Court make other order to the contrary. 2 Seton Dec. (Eng. ed. 1862) 1223.

(d.) *Order for sequestration ; corporation.*

Whereas by the decree [or, order], dated, &c., it was ordered, &c. [recite so much of the decree or order as is required to be performed, or if for non-payment of costs, recite, direction as to costs and certificate of taxation] ; Now, upon motion, &c., by counsel, &c., who alleged that a *distringas* [if so add, and an *alias* and *pluries distringas*] issued against the defendants [the corporation by their corporate name] directed to the sheriff of —, for not, &c. [state the default in respect of which the process issues] ; that pursuant to the said decree [or, order] the said sheriff hath returned *nulla bona* thereon [or, if the sheriff returns issues, say, the sheriff hath returned — issues thereon] ; and upon reading

the said decree [or order] and certificate of taxation, and the said [corporation] still persisting in their said contempt, this Court doth order that a commission of sequestration do issue, &c., until they shall [state what they are required to do] clear their contempt, and this Court make other order to the contrary; unless the said, &c., shall, &c., on notice, &c., show cause to the contrary. 2 Seton Dec. (Eng. ed. 1862) 1229.

(e.) *Writ of sequestration.*

Commonwealth [or, State] of, &c.

To (*Insert the names of Commissioners to whom directed*).

Greeting.

Whereas upon motion made unto us in our Court of Chancery on the — day of —, now instant [or, last], by counsel for the plaintiff, in a cause wherein A. B. is plaintiff, and C. D. is defendant, it was alleged that [recite the whole of the order for sequestration ; but substitute "our said Court" for "this Court," and "our said Court did order," for "this Court doth order," or "it was ordered," and the like]; Know ye, therefore, that we, in confidence of your prudence and fidelity, have given and by these presents do give unto you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said [insert name of contemnor], and to collect, receive and sequester into your hands not * only * 2366 all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estate whatsoever; and, therefore, we command you, any three or two of you, that you do, at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estate of the said [contemnor], and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said [contemnor] shall [state the act to be done, as in the order], clear his contempt, and our said Court doth make order to the contrary.

Witness —, at — the — day of — 18—.

(f.) *Enforcing return of writ.*

Order for sheriff to return writ.

Upon motion, &c., by counsel for the plaintiff, who alleged that a writ of attachment issued against the defendant A. for not, &c. [state the contempt for which the writ issued], returnable on the — day of — directed to the sheriff of —; and that the said sheriff refuses or has neglected to return the same,—this Court doth order that the said sheriff of — do forthwith make his return to the said writ of attachment.¹

¹ Form of order nisi and absolute. See 2 Seton Dec. (Eng. ed. 1862) 1230.

MISCELLANEOUS DECREES AND ORDERS.

1. LEAVE FOR DEFENDANT TO ENTER APPEARANCE ON RETURN INTRA JUR. AND CONSENTING TO BE BOUND.

Upon motion, &c., who alleged that the defendants, other than the defendant A., who was out of the jurisdiction of this Court, having appeared to the plaintiff's bill, a decree has been made, dated, &c., directing certain accounts and inquiries to be taken and made, and that the said defendant A. has since returned within the jurisdiction of this Court, and is desirous of attending the proceedings under the said decree; and upon hearing counsel for the plaintiff [*or*, upon reading an affidavit, &c., of notice to the plaintiff], and the defendant by his counsel submitting to be bound by the said decree, dated, &c., and the several proceedings already had in this cause, this Court doth [*by consent*] order, that the defendant A. be at liberty to enter an appearance to the plaintiff's bill in this cause, and have the like benefit of the decree, and to attend all subsequent proceedings in this cause, as if he had appeared at the hearing of the same. 2 Seton Dec. (Eng. ed. 1862) 1250.

(1a.) DECLARATION THAT PERSONS RESIDING OUT OF THE STATE HAVE BECOME PARTIES TO THE SUIT, AND SUBJECT TO THE JURISDICTION OF THE COURT.

[*Among other things.*] And this Court doth further declare, that said G. K. J. and L. M., two of the defendants named in said bill, having been duly served with process, and appeared and answered thereto, have become parties to said suit and subject to the jurisdiction of this Court therein.¹

2. ORDER FOR GUARDIAN AD LITEM.

(a.) *Guardian assigned on application of infant or non compos.*

Upon motion, &c., who alleged that the said defendant C. is an infant [*or*, a person of unsound mind not so found by inquisition], and

¹ Pingree v. Coffin, 12 Gray, 311.

that [name and description of proposed guardian] is a fit and proper * person to be appointed his guardian, and has no interest * 2368 in this suit adverse to the said infant [or, lunatic], as by an affidavit, &c., appears; and upon reading the said affidavit, this Court doth order, that the said —— be assigned the guardian of the said infant [or, lunatic] C., by whom he may defend this suit. 2 Seton Dec. (Eng. ed. 1862) 1250.

(b.) *Another form: infants.*

[U. States C. C.]

In Equity. C. F. A., Ex'r, v. W. C. J. et al.

On this —— day of ——, it appearing to the Court, &c., that M. A. J., L. C. J., and J. Q. A. J., defendants in this suit, are infants under the age of twenty-one years, it is ordered that R. S. S., Jr., of, &c., Esq., be, and he hereby is, appointed guardian *ad litem* of the said J. Q. A. J.; and F. E. P., of, &c., Esq., be, and he hereby is, appointed guardian *ad litem* of said M. A. J., and L. C. J.

By the Court.

H. W. F., Clerk.

(c.) *Another form.*

Supreme Judicial Court.

C. G. L., Ex'r, v. I. T. et al.

In Equity.

On motion of the plaintiff's solicitor it is ordered, that Mr. A. C. C., a counsellor of this Court, be appointed guardian *ad litem* of Anna Thorndike alias Bayerl, an infant under the age of twenty-one years, one of the defendants to this suit.

By order of T. M., &c.

February 18, 1862.

3. ORDERS FOR LEAVE TO AMEND.

(a.) *Order for leave to amend an injunction bill sworn to, on petition praying for leave to amend the bill, by rectifying such statements as were not within plaintiff's actual knowledge when the bill was drawn, according to what plaintiff now believes to be true, and by omitting such matters as were alleged in the bill on plaintiff's belief only, and are immaterial, and by inserting other matters and charges, as plaintiff should be advised to be material.*

It is hereby ordered, "that the petition of the plaintiff be granted, so far as she be at liberty, within —— days, to amend her bill by * inserting such additional statements, matters, and charges as * 2369 she shall be advised are material, and that the same be made without prejudice to the injunction; and that the defendants B. G., J. W., and T. H. answer the exceptions and the amendments together; and

that the residue of the prayer of the petition be denied, with liberty, nevertheless, to the plaintiff, at her election, to act under this order, or on or before the first day of the next term, upon payment of the costs of resisting this motion, to renew her motion, upon due notice thereof, to amend, accompanied with an affidavit, stating clearly and precisely the amendments, alterations, and omissions proposed."

(b.) To withdraw replication and amend.

Upon motion, &c., and upon hearing counsel for [or, reading an affidavit of notice to] the defendant, This Court doth order, that the plaintiff be at liberty to withdraw his replication, and amend his bill filed in this cause, as he may be advised; and it is ordered, that the plaintiff A. do pay to the defendant B. his costs of this suit up to the present time, and also the costs of this application, to be taxed, &c. Champneys v. Buchan (1854), 2 Seton Dec. (Eng. ed. 1862) 1253.

4. ANSWERS.

(a.) To put in answer in foreign language.

Upon motion, &c., who alleged that the defendant A. hath appeared to the plaintiff's bill, and that the defendant A. lives at —, and does not understand the English language; this Court doth order, that the said defendant A. be at liberty to swear his answer in the — language, and that —, a notary public, be appointed to translate the same into English, and be sworn to the true translation thereof, and that such translation be filed with the original answer, but notice hereof is first to be given to the plaintiff's solicitor. 2 Seton Dec. (Eng. ed. 1862) 1254.

(b.) Order on the hearing of exceptions for insufficiency.

The exceptions taken by the plaintiff to the sufficiency of the defendant's answer to the interrogations filed by the plaintiff for the examination of the said defendant, in answer to the plaintiff's bill, coming on, &c., to be argued before this Court, in the presence of counsel for the plaintiff and for the said defendant; and the said exceptions being opened, upon debate of the matter and hearing the defendant's answer, and the said exceptions taken thereto, read, and what was alleged by the counsel for the plaintiff and for the defendant;

* 2370 * Allowed. — This Court held the answer of the defendant to be insufficient in the points excepted to; and doth order that the said exceptions [do stand and] be allowed. — Direction for payment of costs by defendant, and time to answer, if any :

Overruled. — This Court held the answer of the said defendant to be sufficient in the points excepted to; and doth order that the said exceptions be overruled. — Direction for payment of costs by plaintiff, and liberty to amend, if any :

Some allowed, others overruled. — This Court held the answer of the said defendant to be insufficient in the points excepted to by the 1st,

2d, 3d, 4th, and 5th of the said exceptions; and doth order that the said exceptions, 1st, 2d, 3d, 4th, and 5th [do stand and] be allowed; and this Court held the answer of the said defendant to be sufficient in the points excepted to by the 6th and 7th of such exceptions; and doth order that the said 6th and 7th of such exceptions be overruled; and it is ordered, that the costs of the plaintiff and the defendant of all the said exceptions be taxed by, &c., who is to certify the amount of five-seventh parts of such costs of the plaintiff, and two-seventh parts of the said costs of the said defendant, and deduct the said two-seventh parts of the said defendant's costs from the amount of the said five-seventh parts of the costs of the plaintiff, and certify the balance; and it is ordered, that the said defendant A. do pay to the plaintiff B. the balance so certified.
— Time to answer, if any. 2 Seton Dec. (Eng. ed. 1862) 1256.

5. DEMURRER AND PLEA.

Order on hearing demurrer or plea.

The demurrer [or, plea] put in by the defendant to the whole [or, part] of the plaintiff's bill coming on, &c., to be argued before this Court in the presence of counsel for the plaintiff and for the defendant [*If so, add*, and the said defendant by his counsel demurring orally to the said bill for want of parties]; upon opening and debate of the matter, &c., This Court [*If standing for judgment, add*, did order, that the said demurrer (or, plea) should stand for judgment, and the same standing, &c.]; [*If allowed*, This Court held the said demurrer (or, plea) to be good and sufficient, and doth therefore order, that the same do stand and be allowed]; [*If plaintiff undertakes to reply to plea*, And the plaintiff by his counsel undertaking to reply to the said plea, it is ordered, that the costs occasioned by the said plea be costs in the cause]; and that the plaintiff A. do pay to the said defendant B. his costs of * the said demurrer [or, plea]; *If to the whole bill * 2371 and no liberty to amend given, add*, and also his further costs of this suit to be taxed by, &c.— Liberty to amend [*If any, and if so, add*, but in default of the plaintiff amending his bill within (three weeks) from this date, it is ordered, that the plaintiff A. do pay to the defendant B. his further costs of this suit, to be taxed by, &c.] — [*If overruled*, This Court held the said demurrer [or, plea] to be insufficient, and doth therefore order that the same be overruled.] — Direction as to costs; time to answer, if any. Seton 2 Dec. [Eng. ed. 1862] 1258.

6. DEFENDANT OUT OF JURISDICTION.

(a.) *Order for service of bill on defendant out of jurisdiction.*

Upon motion this day made unto this Court by — of counsel for the plaintiff, it was alleged that the plaintiff has exhibited his bill in this Court against the defendants, A. B., &c., and that they reside at Naples, and that the defendant C. D. resides at Pesth; it was therefore prayed that the plaintiff may be at liberty to serve a copy of the [printed] bill filed in this cause, and the indorsement thereon, on the defendants A. B., &c., at Naples or elsewhere, and on the defendant at

Pesth or elsewhere in Hungary; and the time within which the said defendants A. B., &c., are to appear to the said bill is to be fourteen days after such service, and the time within which the said last-mentioned defendant C. D. is to appear to the said bill, is to be eighteen days after such service. Tripp's Forms, 117.

(b.) *Order for plaintiff to be at liberty to appear for defendant served with bill out of the jurisdiction.*

Whereas by an order, &c., [Recite the order authorizing service abroad]. Now, upon motion this day made unto this Court by —, of counsel for the plaintiff, it was alleged that on the — day of —, the said defendant A. B. was duly served at Naples with a [printed] copy of the said bill and the indorsement thereon, and a copy of the said order, as by the affidavit of the plaintiff and an exhibit marked A, being a notarial certificate in the Italian language of the service of copies of the said bill and duplicate order on the said defendant appears; but the said defendant A. B. hath not entered an appearance to the said bill, as by the — clerk's certificate appears; it was therefore prayed that the plaintiff may be at liberty to enter an appearance to his said bill for the said defendant A. B., which, upon hearing the said order, the notarial certificate, an affidavit of A. E., and certificate read, is ordered accordingly. Tripp's Forms, 118.

* 2372 * (c.) *Order to take bill pro confesso, defendant being out of the jurisdiction.*

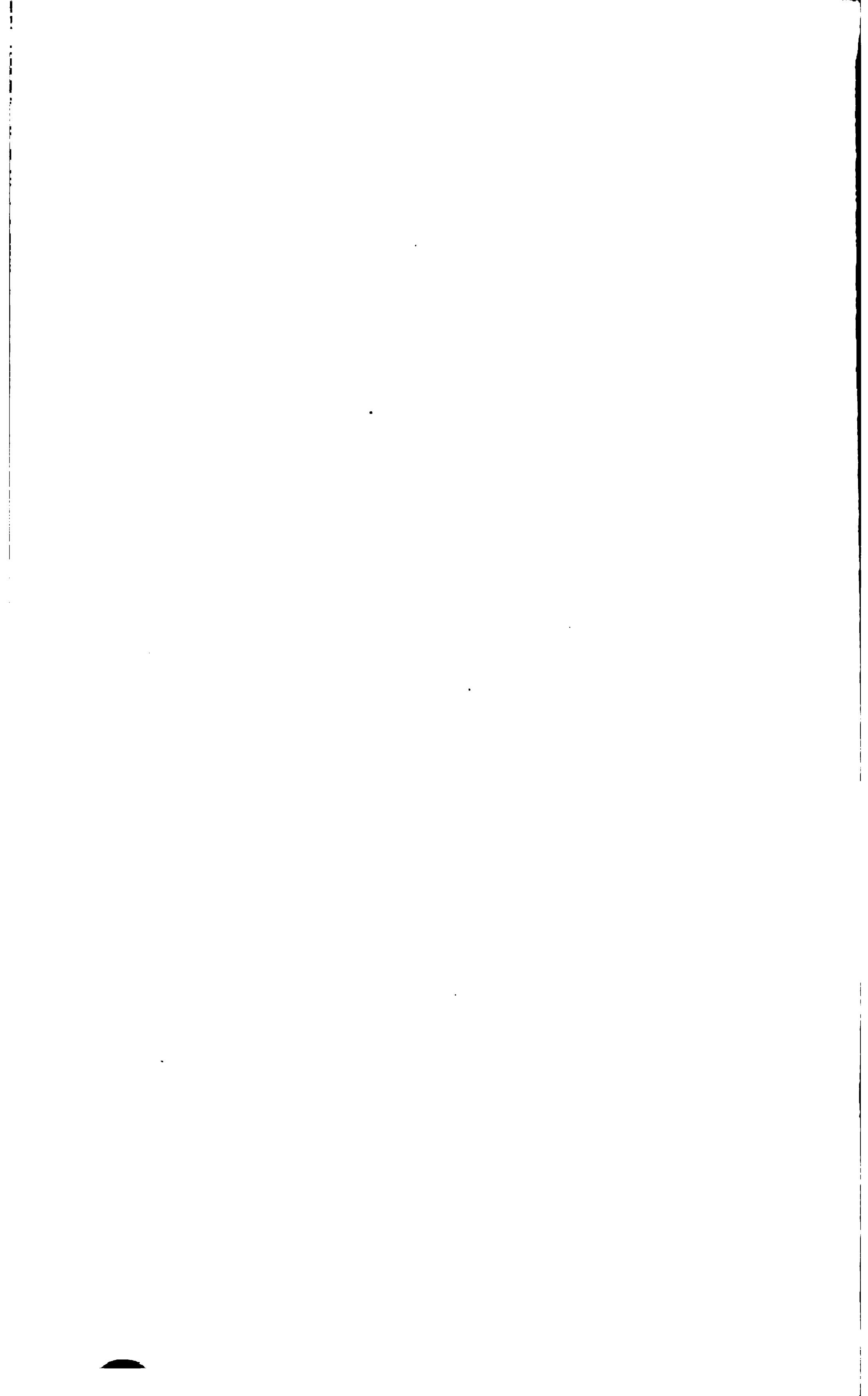
Upon motion, &c., made, &c., by, &c., it was alleged that the defendant F. de H. appeared to the plaintiff's bill, but not having put in his answer within the time limited by the Court in that behalf, an attachment was issued against him for want of his answer, directed to the sheriff of —, who hath returned *non est inventus* thereon; that it appears by the affidavit of G. R., that the plaintiff is unable with due diligence to procure a writ of attachment for want of his answer to be executed against the defendant, by reason of his being out of the jurisdiction of this Court; that the said defendant hath not put in his answer, as by the — clerk's certificate appears; it was therefore prayed that the plaintiff's bill might be taken *pro confesso* against the said defendant; whereupon, and upon hearing the said affidavit, an affidavit of R. H., an affidavit of J. D. W., of notice of this application to the defendant, and the said certificate read, this Court doth order that the clerk, &c., do attend on the — day of — next, with the record of the plaintiff's bill, in order that the same may be taken *pro confesso* against the said defendant F. de H. And it is ordered, that this order be served upon the said defendant. Tripp's Forms, 121.

7. DECREE CONFIRMING ORDER PREVIOUSLY MADE *de bene* IN A CAUSE.

[Among other things.] And upon such hearing this Court doth determine, and doth so order and declare, that the order heretofore passed *de bene esse* in the cause, that the plaintiff be at liberty to examine as witnesses certain J. W. V. and S. S., two of the parties named in the bill of complaint, stand confirmed.¹

¹ Pingree v. Coffin, 12 Gray, 811.

RULES OF PRACTICE
FOR THE
COURTS OF EQUITY OF THE UNITED STATES.



RULES OF PRACTICE

FOR

THE COURTS OF EQUITY OF THE UNITED STATES.

**PROMULGATED BY THE SUPREME COURT OF THE UNITED STATES,
JANUARY TERM, 1842.**

AND

**THE ADDITIONAL RULES AND AMENDMENTS OF RULES ADOPTED
AND PROMULGATED SINCE THAT TIME.**

PRELIMINARY REGULATIONS.

I.

The Circuit Courts, as Courts of Equity, shall be deemed always open for the purpose of filing bills, answers, and other pleadings; for issuing and returning mesne and final process and commissions; and for making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits.

II.

The clerk's office shall be open, and the clerk shall be in attendance therein, on the first Monday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are grantable of course and applied for, or had by the parties or their solicitors, in all causes pending in Equity, in pursuance of the rules hereby prescribed.

III.

Any Judge of the Circuit Court, as well in vacation as in term, may, at chambers, or on the rule days at the clerk's office, make and direct all such interlocutory orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits in the same manner and with the same effect as the Circuit Court could make and direct the same in term, reasonable notice of the application therefor being first * given to the adverse party, or his solicitor, to appear and * 2376 show cause to the contrary, at the next rule day thereafter, unless some other time is assigned by the Judge for the hearing.

IV.

All motions, rules, orders, and other proceedings, made and directed at chambers, or on rule days at the clerk's office, whether special or of course, shall be entered by the clerk in an order-book, to be kept at the clerk's office, on the day when they are made and directed; which book shall be open at all office hours to the free inspection of the parties in any suit in Equity, and their solicitors. And, except in cases where personal or other notice is specially required or directed, such entry in the order-book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices, and other proceedings entered in such order book, touching any and all the matters in the suits to and in which they are parties and solicitors. And notice to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city, the Judges of the Circuit Court may, by rule, abridge the time for notice of rules, orders, or other proceedings not requiring personal service on the parties, in their discretion.

V.

All motions and applications in the clerk's office for the issuing of mesne process and final process to enforce and execute decrees; for filing bills, answers, pleas, demurrers, and other pleadings; for making amendments to bills and answers; for taking bills *pro confesso*; for filing exceptions; and for other proceedings in the clerk's office which do not, by the rules hereinafter prescribed, require any allowance or order of the Court or of any Judge thereof, shall be deemed motions and applications grantable of course by the clerk of the Court. But the same may be suspended, or altered, or rescinded by any Judge of the Court, upon special cause shown.

VI.

All motions for rules or orders and other proceedings, which are not grantable of course or without notice, shall, unless a different time be assigned by a Judge of the Court, be made on a rule day, and entered in the order book, and shall be heard at the rule day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not show good cause against the same, the motion may be heard by any Judge of the Court *ex parte*, and granted, as if not objected to, or refused, in his discretion.

VII.

The process of *subpoena* shall constitute the proper mesne process in all suits in Equity, in the first instance, to require the defendant to ap-

pear and answer to the exigency of the bill; and, unless otherwise provided in these rules, or specially ordered by the Circuit Court, a writ of attachment, and, if the defendant cannot be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the Court.

VIII.¹

Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ or execution, in the form used in the Circuit Court in suits at Common Law in actions of assumpsit. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the Court, or of a Judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall issue against his estate upon the return of *non est inventus*, to compel obedience to the decree.

IX.

When any decree or order is for the delivery of possession, upon proof made by affidavit, of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the Court.

X.

Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the cause; and every person, not being a party in any cause, against whom obedience to any order of the Court may be enforced, shall be liable to the same process for enforcing obedience to such orders as if he were a party in the cause.

XI.¹

No process of *subpoena* shall issue from the clerk's office in any suit in Equity, until the bill is filed in the office.

¹ See ante, p. 1043, note.

¹ See ante, p. 439, note.

XII.

Whenever a bill is filed, the clerk shall issue the process of *subpœna* thereon, as of course, upon the application of the plaintiff, which shall be returnable into the clerk's office the next rule-day, or the next rule-day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the *subpœna* shall be placed a memorandum, that the defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*. Where there are more than one defendant, a writ of *subpœna* may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife defendants or a joint *subpœna* against all the defendants.

XIII.

The service of all *subpœnas* shall be by a delivery of a copy thereof by the officer serving the same to the defendant personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some adult person who is a member or resident in the family.

XIV.

Whenever any *subpœna* shall be returned not executed as to any defendant, the plaintiff shall be entitled to another *subpœna, toties quoties*, against such defendant, if he shall require it, until due service is made.

XV.

The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the Court for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof.

XVI.

Upon the return of the *subpœna* as served and executed upon any defendant, the clerk shall enter the suit upon his docket as pending in the Court, and shall state the time of the entry.

XVII.¹

The appearance-day of the defendant shall be the rule-day to which the *subpœna* is made returnable, provided he has been served with the process twenty days before that day; otherwise his appearance-day

¹ See ante, p. 536, note (a).

shall be the next rule-day succeeding the rule-day when the process is returnable.

The appearance of the defendant, either personally or by his solicitor, shall be entered in the order-book on the day thereof by the clerk.

BILLS TAKEN PRO CONFESSO.¹

XVIII.

It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shown, by a Judge of the Court, upon motion for that purpose, to file his plea, demurrer, or answer to the bill, in the clerk's office, on the rule-day next succeeding that of entering his appearance. In default thereof, the plaintiff may, at his election, enter an order (as of course) in the order-book that the bill be taken *pro confesso*; and thereupon the cause shall be proceeded in *ex parte*, and the matter of the bill may be decreed by the Court at any time after the expiration of thirty days from and after the entry of said order, if the same can be done without an answer, and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant to compel an answer, and the defendant shall not, when arrested upon such process, be discharged therefrom, unless upon filing his answer, or otherwise complying with such order as the Court or a judge thereof may direct as to pleading to or fully answering the bill, within a period to be fixed by the Court or Judge, and undertaking to speed the cause. [Promulgated Oct. 28, 1878. 97 U. S.]

XIX.²

When the bill is taken *pro confesso*, the Court may proceed to a decree at any time after the expiration of thirty days from and after the entry of the order to take the bill *pro confesso*, and such decree rendered shall be deemed absolute, unless the Court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the Court shall deem reasonable, and unless the defendant shall undertake

¹ Under rules 18, 19, a final decree for want of appearance can be rendered at the first term after service of the subpoena only when another rule-day has intervened. *O'Hara v. MacConnell*, 93 U. S. 150; see *Consolidated Fruit Jar Co. v. Strong*, 2 N. J. L. J. 338. Service of a copy of an interlocutory decree, taking the bill *pro confesso*, is not necessary before the final decree. *Bank of United States v. White*, 8 Pet. 262; see *Wallace v. Clark*, 3 Wood. & M. 259. Under rule 19 a third person can intervene and have a sale set aside upon paying the

previous purchaser's expenses, and making an absolute and unconditional bid, but not necessarily paying the money into Court, when his advance in price shows that the property has been clearly undersold. *Blackburn v. Selma R. Co.* 3 Fed. Rep. 689. Under rule 18, a decree which is not confined to the matter of the bill, may be attacked on appeal for that reason. *Central R. Co. v. Central Trust Co.* 133 U. S. 83, 91.

² See *ante*, pp. 517, note (a), 1286, note (a).

to file his answer within such time as the Court shall direct, and submit to such other terms as the Court shall direct, for the purpose of speeding the cause. [Promulgated Oct. 28, 1879. 97 U. S.]

XX.

Every bill in the introductory part thereof, shall contain the names, places of abode, and citizenship, of all the parties, plaintiffs and defendants, by and against whom the bill is brought.¹ The form, in substance, shall be as follows: "To the Judges of the Circuit Court of the United States for the District of _____. A. B., of ____, and a citizen of the State of ____, brings this his bill against C. D., of ____, and a citizen of the State of ____, and E. F., of ____, and a citizen of the State of ____. And thereupon your orator complains and says that, &c."

XXI.²

The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters or excuses which the defendant is supposed to intend to set up by way of defence to the bill; also what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at Law; and the bill shall not be demurrable therefor. And the plaintiff may, in the narrative or stating part of his bill, state and avoid, by counter averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant by way of defence or excuse to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief; and if an injunction, or a writ of *ne exeat regno*, or any other special order, pending the suit, is required, it shall also be specially asked for.

XXII.

If any persons, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason why they are not made parties, by showing them to be without the jurisdiction of the Court, or that they cannot be joined without ousting the jurisdiction of the Court as to the other parties. And as to persons who are without the jurisdiction and may properly

¹ Under this rule, the introductory part of the bill should set out the defendants' names with their citizenship. *United States v. Pratt Coal Co.* 18 Fed. Rep. 708.

² See *ante*, pp. 580, note (a), 630, note (a).

be made parties, the bill may pray that process may issue to make them parties to the bill if they should come within the jurisdiction.

XXIII.¹

The prayer for process of *subpœna* in the bill shall contain the names of all the defendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under * guardianship, shall state the fact, so that the Court may * 2381 take order thereon, as justice may require upon the return of the process. If an injunction, or a writ of *ne exeat regno*, or any other special order, pending the suit, is asked for in the prayer for relief, that shall be sufficient, without repeating the same in the prayer for process.

XXIV.²

Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part that, upon the instructions given to him and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

XXV.

In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness, and directness in the allegations of bills and answers, the regular taxable costs for every bill and answer shall in no case exceed the sum which is allowed in the State Court of Chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

SCANDAL AND IMPERTINENCE IN BILLS.

XXVI.

Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments, *in hæc verba*, or any other impertinent matter, or any scandalous matter not relevant to the suit. If it does, it may, on exceptions, be referred to a Master, by any Judge of the Court, for impertinence or scandal; and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the Court or a Judge thereof shall otherwise order. If the Master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference.

¹ See *ante*, p. 390, note (a).

² See *ante*, p. 312, note (a).

XXVII.

No order shall be made by any Judge for referring any bill, answer, or pleading, or other matter or proceeding, depending before the Court, for scandal or impertinence unless exceptions are taken in writing and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent; nor unless the exceptions shall be filed on or before the next rule-day after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order, when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnecessary delay, pro-* 2382 cure the * Master to examine and report for the same on or before the next succeeding rule-day, or the Master shall certify that further time is necessary for him to complete the examination.

AMENDMENTS OF BILLS.

XXVIII.

The plaintiff shall be at liberty, as a matter of course, and without payment of costs, to amend his bill, in any matters whatsoever, before any copy has been taken out of the clerk's office, and in any small matters afterwards, such as filing blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and generally in matters of form. But if he amend in a material point (as he may do of course) after a copy has been so taken, before any answer or plea or demurrer to the bill, he shall pay to the defendant the costs occasioned thereby, and shall, without delay, furnish him a fair copy thereof, free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous, he shall furnish, in like manner, to the defendant, a copy of the whole bill as amended; and, if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

XXIX.¹

After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any Judge of the Court to amend his bill on or before the next succeeding rule-day, upon payment of costs or without payment of costs, as the Court or a Judge thereof may in his discretion direct.

¹ See *ante*, p. 417, note (b). After long delay, and the filing of answers and replications, and the taking of depositions, the plaintiff must show why the amendment was not made earlier. *Ross v. Carpenter*, 6 McLean, 382; see *Brown v. White*, 16 Fed. Rep. 900. The Court will not hear a motion to set aside an order of amendment, made for the purpose

of getting rid of amendments regularly made under the leave granted. *Lichtenauer v. Cheny*, 3 McCrary, 119; 8 Fed. Rep. 876. It is ground for reversal on appeal if an amended bill was filed without leave of Court, contrary to this rule, after the cause was regularly at issue. *Washington Railroad v. Bradleys*, 10 Wall. 299. See *ante*, p. 409, note (a).

But after replication filed, the plaintiff shall not be permitted to withdraw it and to amend his bill, except upon a special order of a Judge of the Court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the Judge for speeding the cause.

XXX.

If the plaintiff, so obtaining any order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill as the case may require, in the clerk's office on or before the next succeeding rule-day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

*** DEMURRERS AND PLEAS.**

* 2383

XXXI.¹

No demurrer or plea shall be allowed to be filed to any bill, unless upon a certificate of counsel, that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant, that it is not interposed for delay; and, if a plea, that it is true in point of fact.

XXXII.²

The defendant may at any time before the bill is taken for confessed, or afterward with the leave of the Court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part, and answer as to the residue; but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea and explicitly denying the fraud and combination, and the facts on which the charge is founded.

XXXIII.³

The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

¹ See *ante*, p. 686, note (a); National Bank v. Ins. Co. 104 U. S. 54. See *ante*, pp. 542, note (a), 590, note (b).

² The defendant cannot demur, plead, and answer to the whole bill at the same time.

Crescent City Live-Stock Co. v. Butchers' Union Live-Stock Co. 12 Fed. Rep. 225. See Hayes v. Dayton, 18 Blatch. 420. See *ante*, pp. 601, note (a), 608, note (a).

³ See *ante*, pp. 594, n. (a), 694, n. (a), 986,

XXXIV.⁴

If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period unless the Court shall be satisfied that the defendant has good ground, in point of law or fact, to interpose the same, and it was not interposed vexatiously or for delay. And, upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule-day, or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the Court, be reasonably done; in default whereof, the bill shall be taken against him *pro confesso*, and the matter thereof proceeded in and decreed accordingly.

XXXV.

If, upon the hearing, any demurrer or plea shall be allowed, the defendant shall be entitled to his costs. But the Court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill upon such terms as it shall deem reasonable.⁵

XXXVI.

No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

* 2384

* XXXVII.¹

No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

XXXVIII.²

If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument on the rule-day when the same is filed, or on

n. (a); under Rule 83, the sufficiency of a plea is admitted by a replication filed tnereto, and upon final hearing the Court may now proceed as when the benefit of a decree is saved to the hearing. *Pearce v. Rice*, 142 U. S. 28, 42.

⁴ See *ante*, p. 700, note (a). Leave to answer must be given on overruling a plea. *Wooster v. Blake*, 7 Fed. Rep. 816.

⁵ Such leave to amend the bill after a demurrer has been sustained is a matter of discretion, and a refusal thereof is not reviewable. *National Bank v. Carpenter*, 101 U. S. 561.

¹ Rule 37 applies when a demurrer and answer are put in to the whole bill at the same time. *Hayes v. Dayton*, 18 Blatch. 420. See *ante*, p. 601, note (a).

² A decree dismissing the bill under this rule is not a bar to a subsequent suit. *Keller v. Stolzenbach*, 20 Fed. Rep. 47. See *ante*, pp. 594, note (a), 659, note (b), 829, note (a).

the next succeeding rule-day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed as of course, unless a Judge of the Court shall allow him further time for the purpose.

ANSWERS.

XXXIX.*

The rule, that if a defendant submits to answer he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea protect himself from such answer and discovery. And the defendant shall be entitled in all cases by answer to insist upon all matters of defence (not being matters of abatement, or to the character of the parties, or matters of form) in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer and discover upon filing a plea in bar and an answer in support of such plea, touching the matters set forth in the bill to avoid or repel the bar or defence. Thus, for example, a *bona fide* purchaser, for a valuable consideration without notice, may set up that defence by way of answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.

XL.

A defendant shall not be bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the bill, except those interrogatories which such defendant is required to answer; and where a defendant shall answer any statement or charge in the bill to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

DECEMBER TERM, 1850.

Ordered, that the fortieth rule, heretofore adopted and promulgated by this Court as one of the rules of practice in suits in Equity in the Circuit Courts, be, and the same is hereby, repealed and annulled. And it shall not hereafter be necessary to interrogate a defendant specially and particularly upon any statement in the bill, unless the complainant desires to do so, to obtain a discovery. [10 How. Introd. v.]

* Under this rule the plaintiff is deprived of the benefit of the defendant's answer, though he may call the defendant as a witness, and he has the burden of proving his bill. Gaines *v.* Agnelly, 1 Woods, 238. If the defence of the Statute of Limitations is well pleaded, the defendant need not answer further to

such parts of the bill as are covered by it. Samples *v.* Bank, 1 Woods, 523. This rule does not prevent the setting up of matter in abatement by plea instead of by answer at the defendant's option. United States *v.* Gillespie, 6 Fed. Rep. 803. See *ante*, p. 737, note (a).

XLI.

The interrogatories contained in the interrogating part of the * 2385 bill * shall be divided as conveniently as may be from each other, and numbered consecutively 1, 2, 3, etc. ; and the interrogatories which each defendant is required to answer shall be specified in a note at the foot of the bill, in the form or to the effect following, that is to say : "The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3, etc. ;" and the office copy of the bill taken by each defendant shall not contain any interrogatories except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

DECEMBER TERM, 1871.

Amendment to 41st Equity Rule.

If the complainant, in his bill, shall waive an answer under oath, or shall only require an answer under oath with regard to certain specified interrogatories, the answer of the defendant, though under oath, except such part thereof as shall be directly responsive to such interrogatories, shall not be evidence in his favor, unless the cause be set down for hearing on bill and answer only ; but may nevertheless be used as an affidavit, with the same effect as heretofore, on a motion to grant or dissolve an injunction, or any other incidental motion in the cause ; but this shall not prevent a defendant from becoming a witness in his own behalf under section 3 of the act of Congress of July 2, 1864. [13 Wall. Introd. xi.]¹

XLII.²

The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in or addition to such note, after the bill is filed, shall be considered and treated as an amendment of the bill.

XLIII.

Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words, " To the end, therefore," there shall hereafter be used words in the form or to the effect following : "To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer; that is to say : —

" 1. Whether, etc."

" 2. Whether, etc."

¹ See *ante*, pp. 737, note (a), 1863, note (a). of the bill charges. *Buerk v. Imhaeuser*, 20

² Apart from such note, the defendant need Blatch. 274.

answer only as specifically as the stating part

XLIV.³

A defendant shall be at liberty, by answer, to decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill from which he might have protected himself by demurrer.

XLV.⁴

No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without the payment of costs, as the Court, or a Judge thereof, may in his discretion direct.

* XLVI.

* 2386

In every case where an amendment shall be made after answer filed, the defendant shall put in a new or supplemental answer, on or before the next succeeding rule-day after that on which the amendment or amended bill is filed, unless the time therefor is enlarged or otherwise ordered by a Judge of the Court; and upon his default, the like proceedings may be had as in cases of an omission to put in an answer.

PARTIES TO BILLS.¹XLVII.²

In all cases where it shall appear to the Court that persons, who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the Court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the Court as to the parties before the Court, the Court may, in their discretion, proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

XLVIII.

Where the parties on either side are very numerous, and cannot, without manifest inconvenience and oppressive delays in the suit, be all

³ A defendant, who answers to part of the bill, may still decline to answer any interrogatory against which he could protect himself by demurrer. *Fuller v. Knapp*, 24 Fed. Rep. 100.

⁴ Under this rule new matter is to be pleaded by amending the bill by leave of Court. *Duponti v. Massey*, 4 Wash. 128; *Wilson v. Stolley*, 4 McLean, 275. But facts occurring after the filing of the bill cannot be introduced by amending it. *Mason v. Hartford, &c. R. Co.* 10 Fed. Rep. 334; see *ante*, p. 829, note (a).

¹ See *Gross v. George W. Scott Manuf. Co.* 48 Fed. Rep. 35. In a suit by a stockholder "for himself and all others similarly interested who may join," those who, though similarly interested, do not join, are "absent" parties under Rules 47, 48, and are not bound by the decree. *Coann v. Atlanta Cotton Factory Co.* 14 Fed. Rep. 4.

² See *ante*, pp. 149, note (a), 190, note, 243, note (a.)

brought before it, the Court, in its discretion, may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it. But, in such cases, the decree shall be without prejudice to the rights and claims of all the absent parties.

XLIX.*

In all suits concerning real estate which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate, or the proceeds, or the rents and profits, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit; but the Court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

In suits to execute the trusts of a will, it shall not be necessary to make the heir-at-law a party; but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him.

LI.

In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the Court as parties to a suit concerning such demand all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

LII.

Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the clerk's order-book, in the form or to the effect following (that is to say): "Set down upon the defendant's objection for want of parties." And where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his bill by adding parties. But the Court, if it thinks fit, shall be at liberty to dismiss the bill.

⁸ See Chew v. Hyman, 10 Biss. 240; *ante*, p. 222, note 2.

LIII.

If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties, not having by plea or answer taken the objection, and therein specified by name or description of parties to whom the objection applies, the Court (if it shall think fit) shall be at liberty to make a decree saving the rights of the absent parties.

NOMINAL PARTIES TO BILLS.

LIV.

Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party, upon service of the *subpæna* upon him, need not appear and answer the bill, unless the plaintiff specially requires him so to do by the prayer of his bill; but he may appear and answer at his option; and if he does not appear and answer, he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer, he shall be entitled to the costs of all the proceedings against him, unless the Court shall otherwise direct.

INJUNCTIONS.

* LV.¹

* 2388

Whenever an injunction is asked for by the bill to stay proceedings at Law, if the defendant do not enter his appearance and plead, demur, or answer to the same within the time prescribed therefor by these rules, the plaintiff shall be entitled as of course, upon motion, without notice, to such injunction. But special injunctions shall be grantable only upon due notice to the other party by the Court in term, or by a Judge thereof in vacation, after a hearing, which may be *ex parte*, if the adverse party does not appear at the time and place ordered. In every case where an injunction — either the common injunction or a special injunction — is awarded in vacation, it shall, unless previously dissolved by the Judge granting the same, continue until the next term of the Court, or until it is dissolved by some other order of the Court.

BILLS OF REVIVOR AND SUPPLEMENTAL BILLS.

LVI.²

Whenever a suit in Equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor,

¹ See *ante*, p. 1614, note (a).

² In the Federal Courts, the judiciary act of 1789 governs to the exclusion of state practice as to revival, and Rule 56 is declaratory of the Statute. *Fitzpatrick v. Domingo*, 14 Fed. Rep. 216. An order to revive is necessary if the

defendant dies while a patent case is before a commissioner to assess damages, after an interlocutory decree establishing the plaintiff's patent and claim of infringement. *Atterbury v. Gill*, 13 Pat. Off. Gaz. 276.

or a bill in the nature of a bill] of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same, which bill may be filed in the clerk's office at any time; and, upon suggestion of the facts, the proper process or *subpoena* shall, as of course, be issued by the clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be shown at the next rule-day which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

LVII.

Whenever any suit in Equity shall become defective from any event happening after the filing of the bill (as, for example, by a change of interest in the parties), or for any other reason, a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any Judge of the Court on any rule-day, upon proper cause shown, and due notice to the other party.⁸ And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto, on the next succeeding rule-day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by a Judge of the Court.

LVIII.

It shall not be necessary in any bill of revivor or supplemental bill to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

LIX.

Every defendant may swear to his answer before any Justice or Judge of any Court of the United States, or before any commissioner appointed by any Circuit Court to take testimony or depositions, or before any Master in Chancery appointed by any Circuit Court, or before any Judge of any Court of a State or Territory, [or before any notary public.]¹

AMENDMENT OF ANSWERS.

LX.

After an answer is put in, it may be amended, as of course, in any matter of form, or by filling up a blank, or correcting a date, or refer-

⁸ See *ante*, p. 1517, note (a). Upon such petition for leave, the Court simply determines the question of probable cause, and the petition need not, therefore, contain all the averments

of the supplemental bill. *Parkhurst v. Kinman*, 2 Blatch. 72.

¹ The clause in brackets was added Mar. 5, 1889. 129 U. S. 701.

ence to a document, or other small matter, and be resworn, at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication, or such setting down for a hearing, it shall not be amended in any material matters, as by adding new facts or defences, or qualifying or altering the original statements, except by special leave of the Court or of a Judge thereof, upon motion and cause shown after due notice to the adverse party, supported, if required, by affidavit;² and in every case where leave is so granted, the Court or the Judge granting the same may, in his discretion, require that the same be separately engrossed, and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

EXCEPTIONS TO ANSWERS.

LXI.³

After an answer is filed on any rule-day, the plaintiff shall be allowed until the next succeeding rule-day to file in the clerk's office exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the purpose, upon cause shown to the Court or a Judge thereof; and, if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

LXII.

When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had, by two or more of the defendants separately, costs shall not be allowed for such separate answers or other proceedings, unless a Master, upon reference to him, shall certify that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

* LXIII.¹

* 2390

Where exceptions shall be filed to the answer for insufficiency, within the period prescribed by these rules, if the defendant shall not submit to the same and file an amended answer on the next succeeding rule-day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule-day thereafter, before a Judge of the Court, and shall enter, as of course, in the order-book, an order for that purpose; and if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be

² Cause for amending an answer is not shown if new matter, proposed to be thus introduced, could have been earlier introduced by reasonable diligence. India Rubber Comb Co. v. Phelps, 8 Blatch. 85.

v. Pierce, 7 Wall. 205. See Bradford v. Geiss, 4 Wash. 513.

¹ Under Rule 63, exceptions to an answer for insufficiency must be set down on a rule-day for hearing before the Court; and the exceptions are abandoned if they are referred to a Master and on a day not a rule-day. La Vega v. Lapsley, 1 Woods, 428.

³ If the plaintiff does not duly except for insufficiency, an answer which only denies knowledge of the facts alleged in the bill, prevents the bill being taken as confessed. Brown

deemed sufficient; provided, however, that the Court, or any Judge thereof, may, for good cause shown, enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

LXIV.

If, at the hearing, the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto on the next succeeding rule-day; otherwise the plaintiff shall, as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the Court, or of a Judge thereof, upon his putting in such answer, and complying with such other terms as the Court or Judge may direct.

LXV.

If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the Court, or the Judge thereof, at the hearing upon the exceptions.

REPLICATION AND ISSUE.

LXVI.²

Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto on or before the next succeeding rule-day thereafter; and in all cases where the general replication is filed, the cause shall be deemed, to all intents and purposes, at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and

* 2391 the suit shall thereupon stand dismissed, unless the Court, or * a

Judge thereof, shall, upon motion, for cause shown, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

² The order of dismissal for want of a replication is of course, no action by the Court being necessary. *Robinson v. Satterlee*, 3 Sawyer, 134. The Court may in its discretion allow a replication filed later than the time limited to stand, and at the hearing admit

testimony taken more than three months after filing it. *Fischer v. Hayes*, 19 Blatch. 26. The plaintiff must reply to each defendant's answer. *Coleman v. Martin*, 6 Blatch. 291. See *ante*, p. 802, n., 879, note (a).

TESTIMONY --- HOW TAKEN.

LXVII.²

Ordered, That all parts of Rule 67 of the Rules of Practice for the Courts of Equity of the United States, as now existing, be, and the same are hereby, superseded, and the following rule is promulgated as such Rule 67:

After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories filed by the party taking out the same in the clerk's office, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and if no cross-interrogatories are filed at the expiration of the time, the commission may issue *ex parte*. In all cases the commissioner or commissioners may be named by the court or by a judge thereof; and the presiding judge of the court exercising jurisdiction may, either in term time or in vacation, vest in the clerk of the court general power to name commissioners to take testimony.

Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court.

² Rule 67, with its amendments, was previously as follows: —

After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties or severally by either party, upon interrogatories filed by the party taking out the same in the clerk's office, ten days' notice thereof being given to the adverse party to file cross interrogatories before the issuing of the commission, and, if no cross-interrogatories are filed at the expiration of the time, the commission may issue *ex parte*. In all cases the commissioner or commissioners shall be named by the Court or by a Judge thereof. If the parties shall so agree, the testimony may be taken upon oral interrogatories by the parties or their agents, without filing any written interrogatories.

December Term, 1854.

Ordered, that the sixty-seventh rule governing Equity practice be so amended as to allow the presiding Judge of any Court exercising jurisdiction, either in term time or vacation, to vest in the clerk of said Court general power to name commissioners to take testimony in like manner that the Court or Judge thereof can now do by the said 67th rule. Test:

Wm. Thos. Carroll, C. S. C. U. S.

December Term, 1861.

Ordered, That the last paragraph in the 67th rule in Equity be repealed, and that the rule be amended as follows: —

Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the Court, or before an examiner to be specially appointed by the Court, the examiner to be furnished with a copy of the bill and answer, if any; and such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors; and the witnesses shall be subject to cross-examination and re-examination, and which shall be conducted, as near as may be, in the mode now used in Common-Law Courts. The depositions taken upon such oral examination shall be taken down in writing by the examiner, in the form of narrative, unless he determines the examination shall be by question and answer, in special instances, and, when completed, shall be read over to the witness and signed by him in the presence of the parties or counsel, or such of them as may attend, provided, if the witness shall refuse to sign the said deposition, then the examiner shall sign the same; and the examiner may upon all examinations, state any special matters to the Court as he shall think fit; and any question or questions which may be objected to shall be noted by the examiner upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the questions; and the Court shall have power to deal with the costs of incompetent, im-

The examiner, if he so request, shall be furnished with a copy of the pleadings.

Such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors, and the witnesses shall be subject to cross-examination and re-examination, all of which shall be conducted as near as may be in the mode now used in common-law courts.

The depositions taken upon such oral examination shall be reduced to writing by the examiner, in the form of question put and answer given; provided, that, by consent of parties, the examiner may take down the testimony of any witness in the form of narrative.

At the request of either party, with reasonable notice, the deposition of any witness shall, under the direction of the examiner, be taken down either by a skilful stenographer or by a skilful typewriter, as the examiner may elect, and when taken stenographically shall be put into typewriting or other writing; provided, that such stenographer or typewriter has been appointed by the court, or is approved by both parties.

The testimony of each witness, after such reduction to writing, shall be read over to him and signed by him in the presence of the examiner and of such of the parties or counsel as may attend; provided, that if the witness shall refuse to sign his deposition so taken, then the examiner shall sign the same, stating upon the record the reasons, if any, assigned by the witness for such refusal.

The examiner may, upon all examinations, state any special matters to the court as he shall think fit; and any question or questions which may be objected to shall be noted by the examiner upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the questions; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

In case of refusal of witnesses to attend, to be sworn, or to answer any

material, or irrelevant depositions, or parts of them, as may be just.

In the compulsory attendance of witnesses, in case of refusal to attend to be sworn, or to answer any question put by the examiner, or by counsel or solicitor, the same practice shall be adopted as is now practised with respect to witnesses, to be produced on examination before an examiner of said Court on written interrogatories.

Notice shall be given by the respective counsel or solicitors to the opposite counsel or solicitors or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

When the examination of witnesses before the examiner is concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the clerk of the Court, to be there filed of record in the same mode as prescribed in the thirtieth section of Act of Congress, September 24, 1789.

Testimony may be taken on commission, in the usual way, by written interrogatories and cross-interrogatories, on motion to the Court, in term time, or to a Judge in vacation, for special reasons satisfactory to Court or Judge. See further amendment, December Term, 1869, and 139 U. S. 707.

As to the change made in Rule 67 in 1861, see Bischoffsheim v. Baltzer, 20 Blatch. 229. Upon this Rule, see Bleasie v. Garlington, 92 U. S. 1; Van Hook v. Pendleton, 2 Blatch. 85; Western Division, &c. R. Co. v. Drew, 3 Woods, 691; Sickles v. Gloucester Co. 3 Wall. Jr. 186; Ballard v. McCluskey, 52 Fed. Rep. 677; Arnold v. Cheseborough, 35 id. 16. Congress has not conferred upon the circuit and district Courts power to make rules respecting the mode of taking testimony. Randall v. Venable, 17 Fed. Rep. 162. See ante, pp. 888, note (a), 901, note 6, 912, note (a).

question put by the examiner, or by counsel or solicitor, the same practice shall be adopted as is now practised with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.

Notice shall be given by the respective counsel or solicitors to the opposite counsel or solicitors, or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

When the examination of witnesses before the examiner is concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the clerk of the court, to be there filed of record, in the same mode as prescribed in section 865 of the Revised Statutes.

Testimony may be taken on commission in the usual way, by written interrogatories and cross-interrogatories, on motion to the court in term time, or to a judge in vacation, for special reasons, satisfactory to the court or judge.

Where the evidence to be adduced in a cause is to be taken orally, as before provided, the court may, on motion of either party, assign a time within which the complainant shall take his evidence in support of the bill, and a time thereafter within which the defendant shall take his evidence in defence, and a time thereafter within which the complainant shall take his evidence in reply; and no further evidence shall be taken in the cause, unless by agreement of the parties, or by leave of court first obtained, on motion for cause shown.

The expense of the taking down of depositions by a stenographer and of putting them into typewriting or other writing shall be paid in the first instance by the party calling the witness, and shall be imposed by the court, as part of the costs, upon such party as the court shall adjudge should ultimately bear them.

[Promulgated May 2, 1892, 144 U. S. 689.]

Rule 67 was amended May 15, 1893, by adding thereto: "Upon due notice given as prescribed by previous order, the court may, in its discretion, permit the whole, or any specific part, of the evidence to be adduced orally in open court on final hearing." 149 U. S. 793.

Testimony may also be taken in the cause, after it is at issue, by deposition, according to the Acts of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness, either under a commission or by a new deposition taken under the Acts of Congress, if a Court or a Judge thereof shall, under all the circumstances, deem it reasonable.

¹ Under Rule 68, witnesses are to be examined orally in Court for formal purposes, such as verifying a document set out in the plead-

ings, and are not there to be subjected to an extended examination. Western Division R. Co. v. Drew, 3 Woods, 691.

LXIX.²

Three months, and no more, shall be allowed for the taking of testimony after the cause is at issue, unless the Court, or a Judge thereof, shall, upon special cause shown by either party, enlarge the time; and no testimony taken after such period shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions containing the testimony into the clerk's office, publication thereof may be ordered in the clerk's office, by any Judge

* 2393 * of the Court, upon due notice to the parties, or it may be enlarged, as he may deem reasonable under all the circumstances; but, by consent of the parties, publication of the testimony may at any time pass in the clerk's office, such consent being in writing, and a copy thereof entered in the order-book, or indorsed upon the deposition or testimony.

TESTIMONY DE BENE ESSE.

LXX.

After any bill filed and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged and infirm, or going out of the country, or that any one of them is a single witness to a material fact, the clerk of the Court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners as a Judge of the Court may direct, to take the examination of such witness or witnesses *de bene esse*, upon giving due notice to the adverse party of the time and place of taking his testimony.

FORM OF THE LAST INTERROGATORY.

LXXI.

The last interrogatory, in the written interrogatories to take testimony now commonly in use, shall in the future be altered, and stated in substance thus: "Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

CROSS-BILL.

LXXII.¹

Where a defendant in Equity files a cross-bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto before the original plaintiff shall be com-

² Rule 69 is imperative that testimony taken after time cannot be read at the hearing. Wooster v. Clark, 9 Fed. Rep. 854. The three months allowed applies to both the plaintiff's and defendant's testimony. Ingle v. Jones, 9

Wall. 486; Sharon v. Hill, 22 Fed. Rep. 28. The "cause" is not at issue until it is at issue as to all the defendants. Gilbert v. Van Arman, 1 Flipp. 421. See *ante*, p. 890, note (a).

¹ See *ante*, p. 145, note (a)

pellable to answer the cross-bill. The answer of the original plaintiff to such cross-bill may be read and used by the party filing the cross-bill at the hearing, in the same manner and under the same restrictions as the answer praying relief may now be read and used.

REFERENCE TO AND PROCEEDINGS BEFORE MASTERS.

LXXIII.

Every decree for an account of the personal estate of a testator or intestate shall contain a direction to the Master, to whom it is referred to take the same, to inquire and state to the Court what parts, if any, * of such personal estate are outstanding or undisposed of, * 2394 unless the Court shall otherwise direct.

LXXIV.

Whenever any reference of any matter is made to a Master to examine and report thereon, the party at whose instance or for whose benefit the reference is made, shall cause the same to be presented to the Master for a hearing on or before the next rule-day succeeding the time when the reference was made; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the Master, at the costs of the party procuring the reference.

LXXV.

Upon every such reference, it shall be the duty of the Master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties, or their solicitors; and if either party shall fail to appear at the time and place appointed, the Master shall be at liberty to proceed *ex parte*, or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the Master to proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party shall be at liberty to apply to the Court, or a Judge thereof, for an order to the Master to speed the proceedings and to make his report, and to certify to the Court or Judge the reasons for any delay.

LXXVI.¹

In the reports made by the Master to the Court, no part of any state-of-facts, charge, affidavit, deposition, examination, or answer brought in or used before them shall be stated or recited. But such state-of-facts, charge, affidavit, deposition, examination, or answer shall be identified, specified, and referred to, so as to inform the Court what state of facts, charge, affidavit, deposition, examination, or answer was so brought in or used.

¹ Under U. S. Equity rule 76, a commissioner's report need not state what facts he considers proved by the evidence. *McCormack v. James*, 36 Fed. Rep. 14.

LXXVII.²

The Master shall regulate all the proceedings in every hearing before him, upon every such reference; and he shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents applicable thereto; and also to examine on oath, *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate from the * 2395 * clerk's office or by deposition, according to the Act of Congress, or otherwise, as hereinafter provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties.

LXXVIII.¹

Witnesses who live within the district may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a Master or examiner appointed in any cause, by *subpæna* in the usual form, which may be issued by the clerk in blank, and filled up by the party praying the same, or by the commissioner, Master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in Court; and if any witness shall refuse to appear, or give evidence, it shall be deemed a contempt of the Court, which being certified to the clerk's office by the commissioner, Master, or examiner, an attachment may issue thereupon by order of the Court or of any Judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the Court. But nothing herein contained shall prevent the examination of witnesses *viva voce* when produced in open Court, if the Court shall, in its discretion, deem it advisable.

LXXIX.²

All parties accounting before a Master shall bring in their respective accounts in the form of debtor and creditor; and any of the other

² Under Rule 77 the admission of evidence rests in the Master's sound discretion. Wooster *v.* Gumbirner, 20 Fed. Rep. 167. Under this rule, an officer of a corporation may be required to bring its books from its office and produce them before the Master. Erie Ry. Co. *v.* Heath, 8 Blatch. 413. Since its adoption a plaintiff does not preclude himself from taking a decree against a defendant by examining the latter as a witness before a Master. Jenkins *v.* Greenwald, 1 Bond, 126, 133. See

ante, pp. 1171, note (a), 1180, note (a), 1304, note (a).

¹ Rule 78 does not change the English practice so as to allow the oral examination of witnesses on the trial beyond matters of formal proof. Western Division, &c., R. Co. *v.* Drew, 3 Woods, 691. See *ante*, pp. 888, note (a), 900, note 6.

² Rule 79 abolishes the old method of proving the account, item by item. Pulliam *v.* Pulliam, 10 Fed. Rep. 23; Hatch *v.* Indianapolis & S. R. Co. 9 id. 856.

parties who shall not be satisfied with the account so brought in shall be at liberty to examine the accounting party *viva voce*, or upon interrogatories, in the Master's office, or by deposition, as the Master shall direct.

LXXX.*

All affidavits, depositions, and documents which have been previously made, read, or used in the Court upon any proceeding in any cause or matter may be used before the Master.

LXXXI.

The Master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examinations shall be taken down by the Master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the Court, if necessary.

* LXXXII.¹

* 2396

(As amended at October Term, 1893. 152 U. S. 709.)

The Circuit Courts may appoint standing Masters in Chancery in their respective districts (a majority of all the judges thereof, including the Justice of the Supreme Court, the Circuit Judges, and the District Judge for the District, concurring in the appointment), and they may also appoint a Master *pro hac vice* in any particular case. The compensation to be allowed to every Master in Chancery for his services in any particular case shall be fixed by the Circuit Court, in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and borne by such of the parties in the cause as the Court shall direct. The Master shall not retain his report as security for his compensation; but when the compensation is allowed by the Court, he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the Court.

EXCEPTIONS TO REPORT OF MASTER.

LXXXIII.²

The Master, as soon as his report is ready, shall return the same into the clerk's office, and the day of the return shall be entered by the clerk

* Rule 80 does not apply to testimony taken by the examiner for the hearing in chief, under a decree for an accounting in an infringement suit, which was not brought before the Master in making up the case. *Bell v. United States Stamping Co.* 32 Fed. Rep. 549.

¹ This rule does not enable a party to collect from his opponent disbursements which are taxable as part of the costs in a final decree.

Mallory Manuf. Co. v. Fox, 20 Fed. Rep. 409. In cases of difficulty or importance, additional compensation may be allowed to a Master notwithstanding the rate fixed for such services by a rule of the Circuit Court under this provision. *Doughty v. West, B. & C. Manuf. Co.* 8 Blatch. 107. See *ante*, p. 1434, note (a).

² See *ante*, pp. 1304, note (a), 1312, note (a).

in the order book. The parties shall have one month from the time of filing the report to file exceptions thereto; and if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule-day after the month is expired. If exceptions are filed, they shall stand for hearing before the Court, if the Court is then in session; or, if not, then at the next sitting of the Court which shall be held thereafter, by adjournment or otherwise.

LXXXIV.

And in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay costs to the other party, and for every exception allowed shall be entitled to costs; the costs to be fixed in each case by the Court, by a standing rule of the Circuit Court.³

DECREES.

LXXXV.

Clerical mistakes in decrees, or decretal orders, or errors arising from any accidental slip or omission, may, at any time before an actual enrollment thereof, be corrected by order of the Court or a Judge thereof, upon petition, without the form or expense of a rehearing.

LXXXVI.⁴

In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any * 2397 Master, * nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz.: " [Here insert the decree or order.]

GUARDIANS AND PROCHEIN AMIS.

LXXXVII.¹

Guardians *ad litem* to defend a suit may be appointed by the Court, or by any Judge thereof, for infants or other persons who are under guardianship, or otherwise incapable to sue for themselves. All infants and other persons so incapable may sue by their guardians, if any, or by their *prochein ami*; subject, however, to such orders as the Court may direct for the protection of infants and other persons.

³ Costs cannot be thus imposed if the Circuit Court has made no standing rule. Garretson v. Clark, 17 Blatch. 256. The power of the Circuit Court to impose costs under this rule was limited by the fee bill of 1853 (now U. S. Rev. Stats. § 823). Ibid.

⁴ A decree dismissing the bill without costs

as to the only defendant who appeared to litigate is a final decree, and is sufficient in form under rule 86. Judson v. Courier Co. 25 Fed. Rep. 705. See *ante*, p. 2252, note.

¹ See Colt v. Colt, 111 U. S. 566; Sprague v. Litherberry, 4 McLean, 442; Walton v. Coulson, 1 McLean, 120; *ante*, p. 109, n. (a).

LXXXVIII.²

Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party or by some other person. No rehearing shall be granted after the term at which the final decree of the Court shall have been entered and recorded, if an appeal lies to the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the Court, in the discretion of the Court.

LXXXIX.

[As amended April 16, 1894.]

The Circuit Courts (a majority of all the Judges thereof, including the Justice of the Supreme Court, the Circuit Judges, and the District Judge for the District, concurring therein) may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

XC.³

In all cases where the rules prescribed by this Court or by the Circuit Court, do not apply, the practice of the Circuit Court shall be regulated by the present practice of the High Court of Chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local conveniences of the district where the Court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

*** XCI.**

* 2398

Whenever, under these rules, an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof make solemn affirmation to the truth of the facts stated by him.

² Under Rule 88, where no appeal lies from a final decree of the Circuit Court, it may in its discretion allow a rehearing before the end of the next term. *Newman v. Moody*, 19 Fed. Rep. 858. See further *Wooster v. Handy*, 21 id. 51; *ante*, pp. 1019, 1478, notes.

³ Under Rule 90, the English practice in 1842, and not later, is to be followed. *Evory v. Candea*, 17 Blatch. 200; *Goodyear v. Providence Rubber Co.* 2 Cliff. 351; *Pomeroy v. Manin*, 2 Paine, 476. The Supreme Court rules should not be construed as depriving the Circuit Courts of power and discretion as to the conduct of trials, and the order and time of

introducing evidence. *Poultney v. La Fayette*, 12 Peters, 472; *Philadelphia & Trenton R. Co. v. Stimpson*, 14 Peters, 448. See *Wallace v. Clark*, 3 Wood. & M. 359. The Equity Rules are framed to bring causes to a hearing, and do not apply to a cause that has been heard. *Neale v. Neales*, 9 Wall, 1; *Wisner v. Grant*, 7 Fed. Rep. 485; *ante*, p. 417, note (b). A rule of practice, established under an act of Congress, has the force of a statute. *Scott v. The Young America*, Newb. Adm. 107. But a rule of Court is void so far as it conflicts with a statute. *Gray v. Chicago, &c. R. Co.* Woolw. 63. See *ante*, p. 1, note.

XCII.¹

DECEMBER TERM, 1863.

Ordered, that in suits in Equity for the foreclosure of mortgages in the Circuit Courts of the United States, or in any Court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the eighth rule of this Court regulating the Equity practice, where the decree is solely for the payment of money.

INJUNCTIONS.

XCIII.²

OCTOBER TERM, 1878.

When an appeal from a final decree in an Equity suit, granting or dissolving an injunction, is allowed by a justice or Judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending or modifying the injunction during the pendency of the appeal, upon such terms, as to bond or otherwise, as he may consider proper for the security of the rights of the opposite party. [Promulgated Jan. 13, 1879; 97 U. S.]

XCIV.³

OCTOBER TERM, 1881.

Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law, and that the suit is not a collusive one to confer on a Court of the United States jurisdiction of a

¹ See Bendey v. Townsend, 109 U. S. 685, 668. The balance must be already payable. Central R. Co. v. Central Trust Co. 133 U. S. 83. See *ante*, p. 1048, notes.

² Under Rule 93, the judge who allows the appeal may give special notice that the injunction is to continue in force pending the appeal. Leonard v. Ozark Land Co. 115 U. S. 465. The injunction is not affected by the appeal. Ibid.; Knox County v. Harshman, 132 U. S. 14; 133 U. S. 152.

³ See Lafayette Co. v. Neely, 21 Fed. Rep. 738; Whittemore v. Amoskeag Nat. Bank, 26 id. 819; Lawerne v. Mexican Int'l Imp. Co. 38 id. 629. This rule does not apply to a stockholder's suit not "founded on rights

which may properly be asserted by the corporation," but brought to restrain a corporate act, joining the president for discovery only. Leo v. Union Pacific Ry. Co. 17 Fed. Rep. 273. A plea is bad which sets up in defence a fact which the plaintiff must allege in his bill under Rule 94. Garrett v. New York Transit & T. Co. 29 Fed. Rep. 129. This rule has no technical force in cases removed from the State Courts, and the stockholder may prosecute the suit if from the entire record the corporation's failure to enforce its rights appears. Evans v. Union Pacific Ry. Co. 58 Fed. Rep. 497. See *ante*, pp. 28, note (a), 145, note (n), 559, note (b).

case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action.

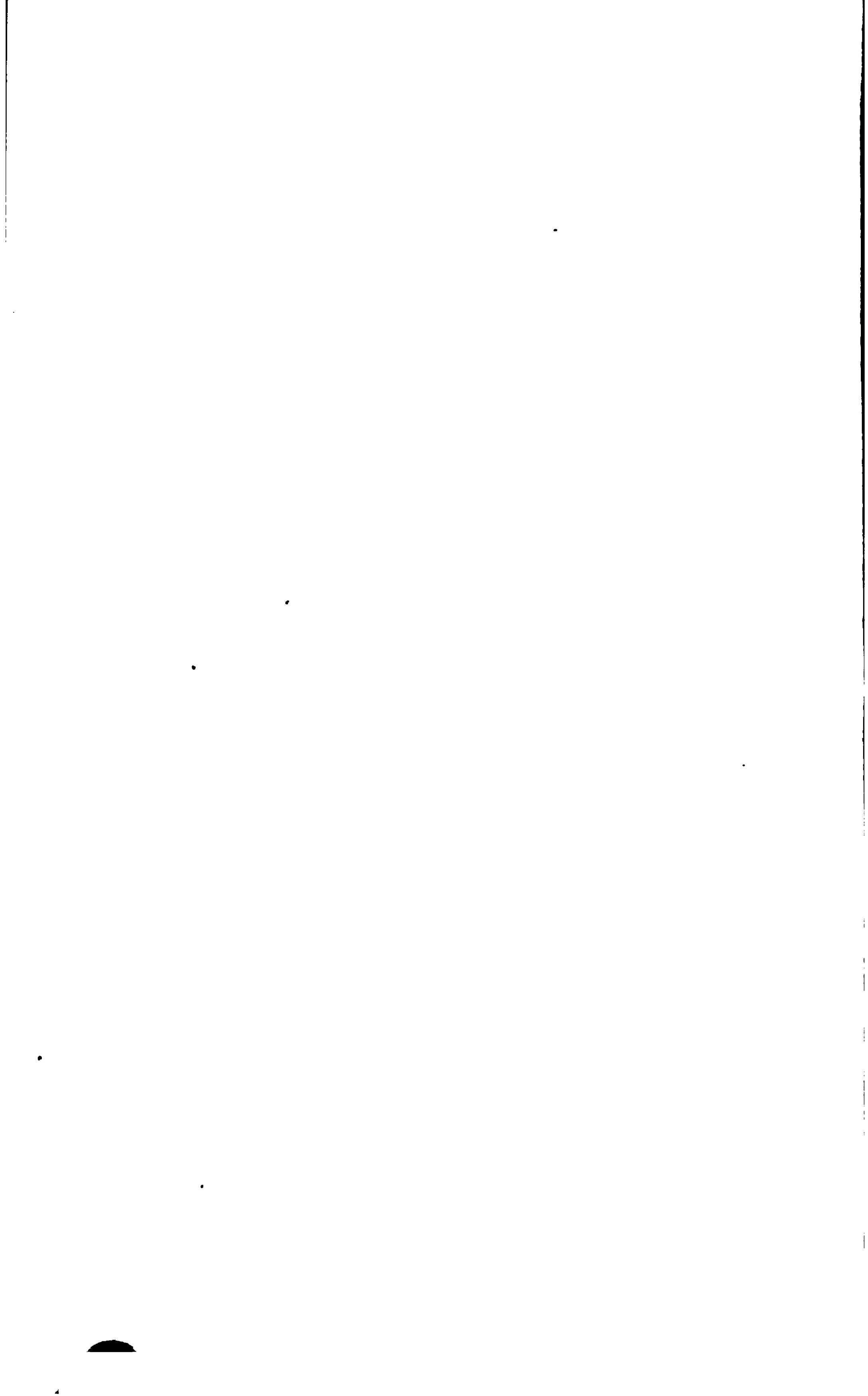
The following provisions relating to Equity Practice are to be found in the Act of 1st June, 1872:—

Sec. 7. That whenever notice is given of a motion for an injunction out of a Circuit or District Court of the United States, the Court or Judge thereof may, if there appear to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion. Such order may be granted with or without security, in the discretion of the Court or Judge: *Provided*, That no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order except within the circuit to which he is allotted, and in causes pending in the circuit to which he is allotted, or in such causes at such place outside of the circuit as the parties may in writing stipulate, except in causes where such application cannot be heard by the Circuit Judge of the circuit, or the District Judge of the district.

Sec. 13. That when in any suit in Equity, commenced in any Court in the United States, to enforce any legal or equitable lien or claim against real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the Court to make an order directing such absent defendant to appear, plead, answer, or demur to the complainant's bill at a certain day therein to be designated, which order shall be served on such absent defendant, if practicable, wherever found; or where such personal service is not practicable, such order shall be published in such a manner as the Court shall direct; and in case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within such further time to be allowed by the Court, in its discretion, and upon proof of the service or publication of said order, and of the performance of the directions contained in the same, it shall be lawful for the Court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but such adjudication shall, as regards such absent defendant without appearance, affect his property within such district only.



GENERAL INDEX
AND
INDEX TO APPENDIX OF FORMS.



GENERAL INDEX.

[THE REFERENCES ARE TO THE STAR PAGING.]

ABATEMENT,

CAUSES OF,

- death of plaintiff or defendant, 1507, 1518.
- marriage of female plaintiff, 118, 1507.
 - of female defendant does not abate, 1515.
- change or transmission of interest, 1507, 1509 n., 1515-1517, 1521 n.
 - assignment, *pendente lite*, 1517, 1522 n.
 - change and restoration of same interest, 1516 n.
 - which might be remedied by revivor, 1507.
 - who may revive in certain cases, 1507 notes, 1516.
 - which could not be remedied by revivor, 1508 and in n.
 - bankruptcy, insolvency, devise of real estate, 1508 and n., 1509 n.
 - when not the result of the death of a party, 1511.
 - as of tenant for life, or person having a temporary, contingent, or defeasible interest, 1511 n.
 - whole interest of party dying devolving upon another party to suit, 1511 in n., 1513.
 - one of several trustees, or husband or wife in certain circumstances, 1511 n.
 - one of several creditors, plaintiffs, on behalf of themselves and others, 1511 n.
 - not the result of death of the plaintiff assignee in bankruptcy, under late act of Parliament, 1512.
 - as to assignee defendant, 1512 and n.
 - not result of death or change of officer of industrial society, 1512.
 - of death or change of other public officers who are parties, 1512 and n., 1513
 - of amalgamation of railway companies, 1513.
 - only to the extent of interests or liability of defendant dying, 1513.
 - death of plaintiff having interest misjoined with plaintiff having no interest, late act, 1514, 1515.
 - death of committee of lunatic, 1517.
 - death of party, corporation sole, 22, 28, 1538.
 - relator, in information, 18, 14.
 - in information and bill, 18, 14.
 - of husband, 113, 1541.
 - of wife, defendant with husband, 188, 189, 1541.
 - in right of wife, 1511 n.
 - not occasioned by infant plaintiff attaining majority, 78.
 - bankruptcy of plaintiff, 68.
 - of defendant, 158.
 - change by death or otherwise of assignee, plaintiff, 65, 1512.
 - defendant, 159, 1512.

EFFECTS OF,

- where interest of plaintiff or defendant wholly ceases on his death, 1520 n.
- where abatement total, suspension of cause, 1542, 1543.
- no proceeding or order can be had, 1542.
 - exceptions, 1548.
 - as to applications to discharge process of contempt irregularly issued or taken, 1543.
 - or to compel revivor within a limited time, 1543.
 - money paid out of court pending abatement, 1548.
 - decree enrolled pending abatement, 1022, 1543.
 - but not passed or entered, 1543.
 - proceedings to preserve property in dispute, 1548 n.
 - to set aside irregular proceedings in Master's office, 1543 n.
 - to punish party for breach of injunction, 1548 n.
 - drawing up and enrolment of decree, 1017, 1022, 1524; order to dismiss, 1544.
 - charging order made notwithstanding, 1039.

[The references are to the star paging.]

ABATEMENT — continued.

- trial direct at law, 1545.
- where abatement is partial, 1544.
- conveyance compelled, 1544.
- process of contempt issued and executed, 1544.
- as to statute of limitations, 1543.
- as to sequestration, 1059, 1543.
- motion for revivor or removal of sequestration, 1060.
- as to injunction, 64, 1548, 1544.
- motion for revivor or dissolution of injunction, 64, 1543, 1544.
- perpetual injunction not affected by, 1544 n., 1688.
- as to receivers, 1544.
- as to interpleader suits, 1571.
- where defendant is in custody upon process, 1543.
- examination of witnesses not affected by, if unknown, 919.
- pleas in abatement, 626.
- motion to revive or dismiss, when made upon abatement, 64, 812, 813, 814.

(See DISMISSAL OF BILL.)

- dismissal of bill for non-prosecution irregular after, 814.
- secus if caused by death of co-defendant, 810.
- how remedied, 1507 *et seq.*, 1509 in n.
- bill of revivor, 1507.

(See REVIVOR)

- order to revive, 1509, 1524–1527, 1539 n.
- how order applied for and on what evidence obtained, 1510 n.
- how discharged, 1510 n.
- supplemental bill, 1515, 1517 *et seq.*, 1523 n.
- filed upon leave, 1523 and n.

(See SUPPLEMENTAL BILL.)

- decree, 1509
- statement, 1529–1531
 - for what available, 1530.
 - defendant cannot file, 1530.
- revivor and supplement, 1546 n.
- statutory provisions, 1508–1515, 1524–1526, 1529–1532.
- revivor unnecessary on marriage of female plaintiff if husband dies before order obtained, 113.
- where suit abates by death of one of the defendants, and a third party acquires his interest before revivor, 1541 n.
- matter in, not ground for bill of review, 113.
- penalty for neglecting to notify registrar of, 977.
- prisoner for contempt, not discharged by, 1543.
- proceedings to be taken by him, 1548.
- when new *subpœna* to hear judgment required after, 969.
- cases of, where simple bill of revivor was sufficient according to former practice, 1507.
- court may proceed in suit without any personal representative, or may appoint one, 1513, 1514.
- appeal to House of Lords on, how rectified, 1501
- proceedings on abatement in creditor's suit, 1170, 1508 n., 1512 n., 1522, 1523.
- conduct of cause taken from plaintiff, pending, 1170, 1544.
- costs, 1527–1529 and notes

ABODE (PLACE OF). (See ADDRESS.)

- necessity of stating plaintiff's, in the bill, 857 and n., 560, 1879 n.
- omission to state, cause of demurrer, 858.
- or motion that plaintiff give security for costs, 358.

ABROAD (See JURISDICTION.)

- bankrupt cannot sue for property abroad, 61.
- service of copy of bill on defendants abroad, 449, 450
- persons abroad not affected by statute of limitations, 647, 648.
- commission to take testimony, 917 in n.

ABSCONDING DEFENDANT,

- appearance for, entry of, by plaintiff, 450
- attachment for want of answer, when issued against, before expiration of time, 480.
- pro confesso*, taking bill against, under general orders, 456, 459, 522.
- pro confesso*, taking bill against, under statute, 456, 457, 518.
 - after entry of appearance by, 519.
- receiver against, when granted, 1718.
- service out of the jurisdiction of bill upon, under original jurisdiction, 449.

[The references are to the star paging.]

ABSENCE,

attorney or counsel, of, new trial at law on ground of, 1181.
postponement of trial of issue on account of, 1114.
witness, of, new trial on ground of, in chancery, 1123, 1182.
at law, 1131.
postponement of trial of issue, on account of, 1114.

ABSENCE, BEYOND SEAS,

effect of, as to statute of limitations, 647, 652 n.

ABSENCE OF PARTIES,

decree without prejudice to, or a saving right of, 150, 154, 292.
objection on ground of, 286-295.
demurrer, plea or answer for want of parties, 287 *et seq.* and notes.
(See OBJECTIONS FOR WANT OF PARTIES.)
power of court to proceed in case of, 191.

ABSOLUTE,

decree against infant, how made, 172.
showing cause against, 73, 165-175.
pro confesso, how and when made, 530, 531.

ABSTRACT OF TITLE,

complete when it is, 1220.
delivery on sale by Master, 1216; how compelled, 1216.
sale by Master, preparation of, on, 1216, 1275.
reference of, to conveyancing counsel, 1217.
examination of, on investment by court, 1340.

ABUSIVE LANGUAGE,

contempt by, 456 n., 1069 and n.

ACCESS,

non, proof of, 584 n.

ACCESSION (QUEEN'S),

judicially noticed, 546.

ACCIDENT,

action, when restrained on ground of, 1628.

ACCORD AND SATISFACTION,

plea of, 669 n.

(See RELEASE).

ACCOUNT,

affidavit verifying, 1222 and notes.
agreement to waive, plea of parol, when good, 670.
alteration in, authentication of, 896.
answer, how set out in, and what details may be required, 724 and notes, 727, 729 in n.
reference to, in, when sufficient, 724.

answer, in, not admitted by plaintiff giving notice to read answer as evidence,
822 n.

appeal, taking of, not stayed pending, 1470.

attorney and client, between, when opened, 667.

balance, how struck, when taken before Master, 1251.

interest on, how computed, with rests, 1251, 1252 and notes.

payment, or transfer into court of, application for, 1781, 1782.

party against whom, found, will be decreed to pay it, 992 n.

bankrupt cannot sue his assignee for, 61.

certainty, required in bills for, 371.

concurrent jurisdiction of Equity, in cases of, 551 and n.

costs, bill of, suit does not lie in respect of, 1845.

costs of suit for, 1896, 1397.

(See COSTS.)

cross-examination on, 1225.

debtor and creditor, form of, 1222 and n.

debts, how taken, 1209-1214.

denial by answer of plaintiff's right, does not relieve defendant from obligation to
set out, 721.

of party on his own oath, 1228.

discharge, accounting party must carry in, 1225.

form of, 1225, 1228.

disclaimer of interest in, insufficient to protect defendant from setting out, 707.

[The references are to the star paging.]

ACCOUNT — continued.

discovery of, not compelled when assets admitted, 718.
 or sufficient admitted for purposes of suit up to decree, 721 n.
 dismissal of bill after order for, 793, 811.
 evidence, what sufficient, in suit for, 856, 857 and n., 992 n.
 as to particular items, irrelevant at original hearing, 857 and n., 992 n.
 expert, assistance of, in taking, 983.

(See EXPERT.)

falsifying, 668 and notes.
 foreclosure suit, form of, and how taken in, (see REDEMPTION.)
 further consideration, further accounts, when directed at hearing on, 1374.
 general, fraudulent release ordered to be delivered up, under prayer for, 381.
 guardian and ward, between, when open, 667, 668.
 jurisdiction, what such account as to give, in Equity, 551 and n., 1929 n.
 — what allegations necessary to show court has, 1929 n.
 just allowances in taking, 1232-1233.

(See JUST ALLOWANCES.)

what are not specified in order of reference, but left in first instance to Master, 1232 and n.

legacies and annuities, of, 1214.
 limitations, plea of statute of, to bill for, 639, 640.
 made out and verified, by whom, and how, 1222.
 Master's office, bringing into, 1222 and n.

enforced, how, 1183, 1222.
 notice of leaving, 1223.
 as to taking accounts in, 1221-1236.

merchant's exception of, from statute of limitations, 641.
 mistake in, stated, not opened for, 668.
 mixed improperly, discovery of, 580.
 mortgaged premises, in suits for redemption of, 1236-1248.

(See REDEMPTION.)

mutual liability to, persons under, should not be co-plaintiffs, 234.
ne exeat, when issued in cases of, 1700.

not issued where defendant held to bail for the same amount, 1701.
 affidavit on which issued, 1702, 1703, 1707.
 co-defendant, against, 1705.

numbering of, in decree or order, 1005.

offer to, insufficient to bar statute of limitations, 646.

offer to pay balance of, not necessary in suit for, 885 and n.

opened when, between persons holding confidential relations, 667, 668.
 not for mistakes only, 668.

order of reference should specify principles of taking, 1004 n., 1221 n., 1231, 1232 in n., 1599 n.

parties to suits for; all accounting persons should be, 216.

secus, if liability several, 271.

persons accounted with, not necessary parties, 218.

persons interested in account, all, 216; unless accounted with, 218.

or sum ascertained, 219; or out of jurisdiction, 219.

co-heirs and next of kin, 217.

real estate, persons interested in, 218.

residuary devisee, 218; or legatees, 218.

contingent interests in, in case of, 217.

partners, 216; unless separate accounts kept, 219.

personal representatives, 200-205, 249-253; in suit against administrator *de son tort*, 252, 319.

personal representative, English, in suit against foreign representative, 250.

trustees, all should be, 268, 269.

secus, if liability several, 271.

by executors, administrators, &c., generally in the Courts of Probate in United States, 1234 in note.

exceptions, 1234 in note.

partnership, bill to take, must pray dissolution, 382, 383.

partnership suits, how taken in, 1248-1250.

patent cases, when directed in, 1642.

obtainable now at common law, 1642.

payment into court, on admission in, 1780.

personal estate, of, not enforced, if assets admitted, 718.

personal estate, of, addition of direction for, in cases of omission, 1029.

[The references are to the star paging.]

ACCOUNT — continued.

personal representative, against, cannot be waived in creditors' suit, 236.
plea of release to bill for, 669.
prayer for general relief, ordering under, 878 n.
principal and agent, between, when opened, 667, 668.
principle of taking, questions, as to, how determined, 1281.
purchase-money, interest and cost of specific performance suit, 1220.
real and personal estate, of, bill for, by heir and next of kin as co-plaintiffs, multifarious, 344, 345.
receiver's, 1752, 1753-1764.

(See RECEIVER.)

redemption suit, form of, and how taken, 1236-1248.
rendering, a bar to the statute of limitations, 646; rents and profits of, in suit to assign dower, 1166.
rents and profits of, not ordered under prayer for specific performance, 880.
report upon, form of, reference to schedules, 1300 and n., 1301 and n.
to be brought down to date of report, 1224 and n.
between report and time for payment, 1224 and n.
single creditor's suit, taken in, not binding on persons not parties, 1207, 1208.
solicitor and client, between, when opened, 667, 668.
stated, practice, when defendant sets up, 371.

(See STATED ACCOUNT.)

surcharging, 668 and notes.
taking, mode of, 1221-1261.
notice of, 1309 n.

(See MASTER'S OFFICE.)

general expenses, no allowance in respect of, in, 1231.
production of documents on, 1225, 1250.
settled accounts, not regarded, unless so directed, 1252.
except in administration suit, 1252.
special direction, as to, 1004 n., 1221 n., 1231 n., 1232 in note.
necessity for, must be shown, 1231 n.
when direction should be given, 1231 n.
proof, where party has *bond fide* dealt with property as his own, 1231.
effect of, containing charge and discharge, 1228-1230 and notes.
Taxing Master, what may be taken by, 1442.
trade-mark, when directed, in cases of, 1649 in n.
trustee and *cestui que trust*, between, when opened, 667, 668.
vouching, 1226, 1227.
objection to voucher, effect of, 1226.
production of voucher, dispensed with, because discharge in same account, 1228 and n., 1229 and n.
lapse of time and loss, on account of, 1280.
unnecessary, if sum under 40s., 1227 and n.
waste, account in cases of, incidental to injunction, 1634.

ACCOUNT (IN ACCOUNTANT-GENERAL'S BOOKS),
carriage from one account to another, how effected, 1796.

to joint of husband and wife, effect of, on her right by survivorship, 116.
dormant, investigation of, 1815.
title of, 1785.
transcript of, 1786.

ACCOUNTANT,

assistance of, how and when obtained, 983, 1329, 1380.
(See EXPERT.)

trustees, when allowed to employ, 1235.

ACCOUNTANT-GENERAL,

appointment and duties of, 1770.
certificates of, 1786, 1787, 1792, 1812, 1813.
(See CERTIFICATE.)

checks of, 1805-1807.

(See CHECK. ACCOUNTANT-GENERAL.)

ACCOUNTANT-GENERAL'S OFFICE,

appeal from order for payment out, practice at, in case of 1471, 1814.
business and general course of practice in, 1782, 1783.
constitution of, 1770 n.
decree or order, portion of, acted on at, 1788.

[The references are to the star paging.]

ACCOUNTANT-GENERAL'S OFFICE — continued.

- documents left at, on bespeaking direction for payment in, 1783 n.
- check on payment out, 1805.
- direction for investment, 1790.
- transfer or delivery out, 1811-1813.
- fees taken in, 1786 n.
- searches in, when made, 1786.
- stop order, lodging at, 1041, 1696.
- vacations in, 412.

ACCOUNTANT TO THE CROWN,

- receiver, objectionable as, 1783.
- suits against, 6, 7.
- suits by, against Attorney-General, 134.

ACCOUNTING PERSON,

- costs, when not ordered to pay, though balance due from him, 1396.
- entries in books of, when evidence for and against, 1228.
- husband of, generally necessary party, 253 n.
- interest, when charged with at further consideration, 1369.
- necessary party to suit for account, 248.
- securis, where liability several, 271; or accounted with, 218.
- personal representative, when a necessary party, 253.

ACKNOWLEDGED DEED,

- payment out of fund representing real estate of married woman, without, 99, 1802.

ACKNOWLEDGMENT,

- limitations (statute of), what sufficient to take case out of, 646.
- dower, in suit for arrears of, 653, 1058.
- legacies, in case of, 652, 653.
- money charged on land, 651, 652.
- mortgages, in cases of, 650-652.
- rent, arrears of, in suits for, 653.
- simple contract, in cases of, 646.
- recognizance of, where given by receiver, 1739.

ACQUIESCEANCE,

- breach of injunction or restraining order, effect of acquiescence in, 1686.
- effect of, with reference to the statute of limitations, 650.
- interlocutory injunction, effect of, on application for, 1663.
- on application to dissolve, 1678.
- pledged how, 314 n.
- receiver by, effect of, on right of *cestui que trusts*, 1724.

ACT OF PARLIAMENT,

- affidavit of title, on application for payment out of deposit under, 1011, 1802, 1803.
- dismissal of bill on plaintiff's application, when rendered nugatory by subsequent, 791.
- plea of, 638-658
 - averments in, 657, 658.
 - certainty required in, 683.
 - of local or private, 658.
 - act must be set out in, 658.
 - oath, must be on, 658.
- proof of, when printed by Queen's printer, 862, 863 n.
- when not printed, 862 n.
- union of England and Ireland, when passed before, 862, 863.

ACTION AT LAW,

- amendment of, into suit in Equity, 403 n.
- bail bond, on, not precluded by sending messenger, 469.
- bill to restrain, substituted service of, 447.
- costs of successful, when allowed, though not sanctioned, by court, 1750.
- creditor by, restrained after administration decree, 1614, 1617.
- (See CREDITOR. DEBTS AND LIABILITIES, ACCOUNT OF.)
- not after order for preliminary accounts and inquiries, 992.
- defence of, by receiver, leave necessary for, 1749.
- discovery, bill of, in aid of a defence to, 1556.
- ejectment, of (see EJECTMENT, ACTION OF).
- election between suit and, compelled, when, 815.
- injunction, where granted to restrain, 511, 1058, 1623, 1624.
- co-defendant, when brought by, 1618 n., 1734 n.
- course, where question both legal and equitable, 1624.

[The references are to the star paging.]

ACTION AT LAW — *continued.*

decree, when inconsistent with, 1614.

stage of action, at which granted, 1624.

substituted service of bill, when allowed, 447.

(See INJUNCTION AND RESTRAINING ORDER.)

irregular contempt, on, when allowed or restrained, 511.

legal title, when formerly directed to establish, 1072, *et seq.*, and notes.

plea of pendency of, for same matter not valid, 634.

receiver or sequestrator, against, leave for necessary, 511, 1618

security for costs, when not required from defendant in, 29.

sheriff's officer executing writ, against, when restrained, 511, 1063, 1618.

survivorship, effect of, on wife's right by, 89, 115.

trustee by or against, leave to bring or defend, when necessary, and how obtained, 1342, 1343.

undertaking not to bring, dismissal of bill upon, 995

all questions of law and fact may be determined by Court of Chancery in modern English practice, 1071.

ACTOR,

breach of agreement by, when restrained, 1654.

ACTS,

all preliminary, necessary to complete plaintiff's title, must be averred, 319.

ACTUARY,

assistance of, how obtained, 983.

(See EXPERT.)

ADDING TO THE DECREE,

accounts and inquiries, when further may be added, 1260.

application for order, how made, 1261, evidence and service, 1261.

notice of decree, on application of person served with, 436, 437.

ADDRESS,

bill, of, 357 and notes.

when Great Seal in Sovereign's own hands, 2, 357.

when holder of Great Seal a party, 2, 357.

amended bill, of, 402.

corporation, of, statement of, not necessary in bill by, 359. See 357 in n.

demurrer, for non-statement of plaintiff's, 358 and n., 561.

married woman, of, statement of, in bill by, 359.

misdescription or omission of plaintiff, how taken advantage of, 358.

(See COSTS, SECURITY FOR.)

next friend's statement of in bill, 359.

omission of, how taken advantage of, 359 n.

peer, of, statement of, not necessary in bill by, 359.

petition of, 1603, 1604.

petitioner's, statement of, in petition, 1604.

plaintiff's, statement of, in bill, 357 and n., 358.

cross-bill, in case of, 359, 1553.

next friend, not required in suits by, 359.

omission of, how taken advantage of, 358.

(See COSTS, SECURITY FOR.)

plaintiff or his solicitor's note of, at end of bill, 889, 397.

plea for misdescription of plaintiff's, 358, 680.

what it should contain, 1878 n.

ADDRESS (FOR SERVICE),

solicitor's or party's (if acting in person), to be written or printed on writs and summons, and, on proceedings, left at Record and Writ Clerks' Office, 454.

change of, notice to be given of, at Record and Writ Clerks' Office, 455 n.

service at, of proceedings not requiring personal service, 454.

ADEMPTION,

parties in cases of, 255 n.

ADEQUATE REMEDY AT LAW,

discovery, upon bill of, 551 n.

objection of, how made, 313 n., 630 n., 659 n., 712 n.

effect, 986 n. (a), 1734, n. (b).

ADEQUATE VALUE,

bill must be for, and what is, 243 n., 328, 329 and notes.

objections for want of, how taken, 329.

[The references are to the star paging.]

ADJOURNMENT (OF CAUSES), 975, 976.

amendment of bill, in consequence of, 976.
compromise of suit, on the ground of pendency of, 976.
consent by, 975.
costs of the day, on payment of, 975.
cross or supplemental causes, in case of, 976.
reasons for, 976.

ADJUDICATION IN BANKRUPTCY,

evidence of, 66 n.
validity of, how disputed, 59, 65.

ADMINISTRATION (LETTERS OF),

allegation of grant of, obviates demurrer but not plea, 318, 319.
costs of taking out, mortgagee, when allowed, 1387, 1388.
costs of taking out, to a share, 1431 n.
discovery of proceedings on grant of, not required in suit for realty, 570.
dispensed with, on payment of small sums, when, 1802.
insufficiently stamped, no decree till defect remedied, 319.
left on bespeaking order for payment to administrator, 1803.

ADMINISTRATION (LIMITED LETTERS OF),

grant of, where personal representative abroad, or infant, 204, 205.
payment out, under, 1809.
proceedings in case of, binding on general personal representative, 201.
sufficient for purposes of suit, when, 201.

ADMINISTRATION SUIT,

concurrent, plea of pendency of, 685.
concurrent, staying, 685, 796-800.

(See CONCURRENT SUIT.)

conduct of, 433 n., 635, 1169, 1170.

concurrent suits, in case of, 800.

costs of, 1410, 1411, 1422, 1423, 1428-1433.

(See COSTS.)

decree in, action by creditor restrained after, 1614-1617.

(See CREDITOR.)

decree in, on application of residuary legatee, next of kin, legatee interested in legacy charged on realty, person interested in proceeds of realty directed to be sold, residuary devisee, or heir, executor, or administrator, others not being parties, 432, 433.

but they must be served with notice of it, 217, 218, 224-226, 238.

estates of two persons, when they may be combined in one suit, 336.

general personal representative, necessary party to, 201.

payment into court in, by party found a debtor, 1777.

preliminary accounts and inquiries, effect of order for, in, 992, 993.

proof of debt in, no election not to sue at law, 817 n

real estate, of, discovery of proceedings on, grant of administration not required in, 570.

real and personal estate, of, by heir and next of kin, multifarious, 344, 345.

settled accounts allowed in, without express direction, 1252.

statutory provisions as to parties to, 432, 433.

trustees, all necessary parties to suit for general administration, 269.

represent *cestui que trusts* in, 222.

trustees, effect of suit on powers of, 1342.

ADMINISTRATOR,

administration decree, on application of, against a legatee or next of kin, 226.

all necessary parties, but not necessarily co-plaintiffs, 227.

de son tort, legal personal representative party to suit against, 319.

defaulting, costs of assignees in bankruptcy of, 1423.

defendant, when a necessary, 249 n., 254 n., 283 n.

evidence in suit against, 857.

limitations, statutes of, do not run against, until grant, 648.

plaintiff, description of, as such, in bill, 359.

plaintiff suing before grant must obtain it before hearing, 318.

such a bill not demurrable if grant alleged, 819.

but fact may be pleaded, 319.

plea that defendant is not, 631.

that plaintiff is not, 630.

costs of, 1416, 1422, 1423. (See PERSONAL REPRESENTATIVES.)

[The references are to the star paging]

ADMINISTRATOR (*AD LITEM*),

authority of, 201.
costs, when allowed, though no personal estate, 1422.
estate sufficiently represented by, when and when not, 201, 202
payment out to, not ordered, 204, 1802.

ADMINISTRATOR (*DE SON TORT*),

personal representative necessary party to suit against, for account, 251, 252, 319.

ADMINISTRATOR (*DURANTE ABSENTIA*),

appointment of, when necessary, 252 n.

ADMINISTRATOR (*PENDENTE LITE*),

appointment and authority of, 204, 251 and n.

ADMINISTRATOR OF PROPERTY OF CONVICT,

appointment and powers of, 56 and n.

costs of, 56 n.

execution of, decrees and orders against, 57.

liabilities of, 56, 57.

proceeding against, for account, 57.

ADMINISTRATRIX,

husband of, generally necessary party, 253.

married woman, *ne exeat* not granted against, 180, 1704.

ADMIRALTY (COURT OF),

demurrer that it is proper tribunal, 553.

injunction against proceedings in, when granted, 1626.

plea of judgment of, 663.

ADMISSION OF ASSETS. (See Assets.)**ADMISSIONS,**

actual, what are, 838-848.

general nature of, 837, 838.

difference between constructive and actual, 837, 838.

agreement by, 848, 849.

clear and distinct, must be, 848.

documents, of, 849.

effect of reference to document itself "for greater certainty," 838.

filings of, 849, 1010.

policy of law, must not be contrary to, 849.

writing, should be in, 848.

agreement, of, neutralized by insisting on statute of frauds, 840 n.

answer, by, 838-847, 850 n., 852 n., 855 n., 1029 n.

co-defendant, of, usually not read as, 841 and n.

exceptions, 842, 843.

where one claims through the other, 842 and n.

of one defendant may be read in favor of another, 841 n.

if he takes the advantage, he must submit to the disadvantage of it, 841 n.

where several are liable as partners or co-obligors, 842 and n.

when bill by one partner against co-partners, 842 and n.

of obligee against his previous assignee, in same suit, 842 n.

of principal debtor, not evidence against surety, 842 n.

mere silence in answer of one defendant, 842 n.

cross-bill of discovery, to, read as, 840.

cross interrogatories, to, read as, 840.

infant's, cannot be read as against him, 169, 170, 841.

unless adopted on attaining twenty-one, 841.

guardian's, read against him, 841.

husband and wife, 184, 185, 841.

insufficient, when permitted to be completed by evidence, 857, 858.

lunatic's, by his committee, read against him, 841.

married woman, in separate answer of, 184.

her inheritance not bound by, 185.

against her husband, 842 n.

mistaken, controverted only by correction, not by cross-bill, 782.

supplemental answer, when permitted in order to correct, 781, 782.

motion on, not a waiver of insufficiency in answer, 782.

payment into court, on, 1780-1782.

(See PAYMENT AND TRANSFER INTO COURT.)

replication does not preclude answer from being read as, 829.

qualifying passages must be read, 839.

[The references are to the star paging.]

ADMISSIONS — *continued.*

- sufficient, what are, 840.
- belief, 840.
- information, without belief, 840.
- unsound mind, of person of, whether it can be read as, 178, 841.
- when bill charges fact in defendant's knowledge, 837 n.
 - not in defendant's knowledge, 837 n.
- fact well alleged, not denied, 837 n.
- where answer not under oath, 887 n.
 - not denying, admits, 837 n.
- practice as to reading defendant's answer, 837 n.
- bill, by, 838.
 - defendant, when read by, as, 838, 839.
 - amendment, effect of, 839.
 - another suit, when read as although in, 839.
 - law, when read as at, 838.
- constructive, 837.
- pleas, in case of, 837.
- demurrer, extent of admissions by, 544, 545.
- confessions used as, must be pleaded, 866.
- depositions in other courts, now used as, 866.
- documents used as, must be pleaded, 855.
- foreign law, 864 n.
- frauds, statute of, 850 n.
- heir, of, will established upon, 875.
 - secus*, where heiress a married woman, 184, 185, 876.
- infant, cannot be made on behalf of, 170.
 - ancestors, binding on infant, 171.
 - insertion of, in decree or order, 1008.
 - letters used as, must be pleaded, 855.
 - pleadings, must be noticed in, 855.
 - pro confesso*, bill taken, when read as, 581, 838 n.
 - record, on the, 837.
 - trial of issue, what directed to be made on, 1112.
 - will, what sufficient admission of execution of, 858.
 - written, filing of, 849, 1010.
 - Registrar's indorsement on, 849, 1010.
 - minutes, to be left on bespeaking, 1010.
 - effect of defendant's answer when only one witness in opposition to it, 843 and n.
 - answer responsive to be taken as true, unless, &c., 843 n., 846.
 - coextensive with obligation to answer, 844 in n.
 - rule not affected by provision that parties may testify, 844 in n., 848.
 - plaintiff cannot overcome answer by impeaching character of defendant for truth and veracity, 844, 845 in n.
 - rule not affected by allegation of fraud in bill, 844, 845 in n.
 - when answer responsive within rule, 844 in n.
 - statement of account, 844, 845 in n.
 - not responsive, and setting up affirmative allegations, 844 in n.
 - effect of answer when case heard on bill and answer, 845 in n.
 - rule as to effect of answer applies only when it is *positive* and not mere *belief*, 845 in n., 846.
 - must be founded on personal knowledge, 845 in n.
 - not evasive, 846 in n.
 - where answer is by corporation, or the oath is waived, 845 in note, 846 n.
 - effect of answer in such cases, 845 in n., 846 n.
 - where there is part performance of a parol agreement, 847.
 - circumstances that may overcome effect of answer, 846, 847 in n.
 - issue, or trial at law, where answer is met by one witness, and corroborating circumstances, 847 and n.
 - use of answer in trial of issue, 847, 848 and n.
 - of ordering admissions, when an issue is directed, 1112, 1113 and in n.
 - ADOPTION (OF SUIT),**
 - by infant, effect of, 78.
 - ADULT,**
 - not bound by decree made against him as if an infant, 72 n.
 - ADULTERY (OF WIFE),**
 - discovery, to prove, 563 n.
 - equity to a settlement, effect of, on, 104, 107.
 - evidence of, only admitted under express charge of, 853.

[The references are to the star paging.]

- ADVANCE (OF HEARING),**
annuity, where bill for, 972.
demurrer, of, 595.
directed, when, 972.
foreclosure suit, of, 972.
costs of motion for, 1601.
improper, cause struck out in consequence of, 973.
pro confesso, where bill ordered to be taken, 972.
pro forma, 974.
cross cause, of, 975, 1553.
specific performance, where bill for, 972.
supplemental cause, of, 975.
- ADVANCE OF DEMURRER,**
injunction bill, where directed in case of, 595, 1671.
- ADVANCE OUT OF FUND IN COURT,**
issue, when made for trial of, 1082.
- ADVANCEMENT OF INFANT,**
application for, how made, 1362.
power for, usually contained in settlement, 1361.
- ADVERSE POSSESSION,**
plea of, 672, 673.
trustee and *cestui que trust*, in cases of, 644, 645.
- ADVERTISEMENT,**
claimants under decree, when issued for, 1203.
preparation and form of, 1204, 1934 n.
publication of, 1204.
creditors, for, on estate of deceased person, 1203, 1204.
debts revived by, when, 642.
incumbrances, for, when issued, 1214.
legatees, when issued for, 1203, 1204, 1214.
motion for decree, not ordered of notice of, 820.
pro confesso, of notice of motion to take bill, 520.
insertion of, where time excessive, 521.
replication, of filing of, when directed, 820, 832.
sale by auction by Master, on, 1269.
for creditors, effect of, 1203, 1204.
personal representatives, when not necessary parties after, 250.
subpœna to hear judgment, of, 969.
- ADVOWSON,**
partition of, how affected, 1157.
seisin of, how alleged, 362.
- AFFIDAVIT, 891-903.**
accompanying bill, when necessary, 892-396 and notes.
omission of, how taken advantage of, 375, 562.
service of copy of, 396, 442.
sworn, when and by whom, 394.
account, verifying, 1222 notes; receivers, 1753.
affirmation, when taken instead of, 898.
(See AFFIRMATION.)
alteration in, how authenticated, 895.
consent to file, though not authenticated, 895.
amend bill, in support of application for leave to, 414, 415.
information, 415.
answer, may be treated as, on application for or to dissolve injunction, 1668 and n., 1676-1678.
on motion for decree, 871, 888; or for receiver, 1738.
verifying, 848 n.
assets, of, on application to restrain creditor's action after administration decree, 1617.
attestation of officer by whom taken, 897.
blind man, of, how taken, 897.
cause or matter, must be made in, 893.
claim, in support of, 1209.
closing of evidence, filed after, received when, 889, 890.
leave to use, how obtained, 890.
power of court to allow use of, at hearing without special leave, 890.
collusion, of no, in interpleader suit, 394, 1562 and notes.
copies of, by whom furnished, 899.

[The references are to the star paging.]

AFFIDAVIT — continued.

- charges for, 900 n.; pauper when furnished to or by, 44, 900 n.
- not allowed, when, 900.
- form of, 900.
- neglect, omission, or refusal to deliver, consequence of, 900.
- time for furnishing, 899, in case of injunction, 900, 1670; and of *ne exeat*, 900, 1709.
- corporation, of agent or officer, to bill by, 395 in n.
- costs of, on interlocutory applications, 1440 n.
- cross-examination, on, 889, 918.
- (See **CROSS-EXAMINATION.**)
- dates in, how expressed, 895.
- deaf and dumb persons, of, how taken, 897.
- death of deponent, effect of, 891.
- de bene esse*, on application to examine witness, 936, 937.
- demurrer for want of, 562, 586; included in general demurrer, 587.
- description of deponent in, 893.
- diligence in execution of attachment, of, 465 and n.
- discovery, bill of, when annexed to, 392, 393, 395 in n. 1558.
- distringas* on stock, on issue of, 1691.
- documents, as to, 889, n. (b), 1820–1822.
 - answer setting out documents when ordered after, 1821.
 - claimant under decree, in case of, 1209, 1222, 1820 n., 1825.
 - corporation aggregate, by whom made in case of, 1821.
 - cross-examination on, not allowed, 889, 1823.
 - description of documents in, 1822.
 - form of, 1822.
 - informality or insufficiency, proceedings in case of, 1823.
 - objections to production, how raised by, 1822.
 - omission in, further affidavit may be required in case of, 1824.
 - parties who must join in, 1822.
 - payment off of mortgage on, 998 n.
 - time to make, extension of, how obtained, 1822.
 - unanswered interrogatory, as to documents in case of, 1821.
- enlargement of time to answer, on application for, 740.
- entry of in degree or order founded thereon, 1003.
- erasure in, effect of, 895.
- evidence, when taken by, 888.
- exhibit to, 896, 897; when not to be annexed, 896.
 - identification of, 896.
 - left on bespeaking decree or order, 1011.
 - reference to, in decree or order, 1008.
- ex parte* examination treated as an affidavit, 901.
- filings, 898; in pressing matter in, 898, 899.
 - notice of, 899.
 - time for, an interlocutory application, 899.
- first person, must be expressed in, 894.
- foot-note to, 899.
- foreign or colonial courts, filed or deposited in, how proved, 863.
- foreigner, of, how taken, 897.
- form of, 893.
- impertinence in, costs occasioned by, 895.
 - application for, when to be made, 895.
- incumbrances on legacies, as to, 1214.
- injunction, to bills praying, 394, 395 in n.
 - ne exeat*, 395 in n.
- interlineation in, how authenticated, 895.
 - consent to file, though not authenticated, 895.
- interlocutory applications, time for filing, on, 899.
- interpleader, bill of, accompanied by, 894, 1562, 1568.
- irrelevance in, remedy for, 894.
- issue joined, filed before, notice to read necessary, 889.
 - time for giving notice and enlargement thereof, 889.
- jurat to, 896, 897.

(See **JURAT.**)

- jurisdiction, how taken out of the, 892.
- knowledge, means of, must be shown, 894.
- lost instrument, suit to obtain the benefit of, 892.
- made in one cause, cannot ordinarily be used in another, 893.
- marksman, of, how taken, 897.

[The references are to the star paging.]

AFFIDAVIT — continued.

merits, not now required in case of substituted service, 447 n.
mortgage money, of attendance to receive, 998 n.
motion, on, 1598.

(See MOTION.)

motion for decree, on, 821, 822.

(See MOTION FOR DECREE.)

name of deponent, must be inserted in, 893.

new trial, on application for, 1181.

no settlement of, when required, and form of, 95.

where usual affidavit is not procurable, 95 n.

numbered paragraphs, must be divided into, 894.

oath, administration of, 746, 898.

oath, statement that deponent makes, necessary in, 894.

office copy of, 899, 900.

injunction dissolved, because not in court, 1669.

left on bespeaking decree or order, 1011.

production of, by party taking, 899, 900.

(See OFFICE COPY.)

patent cases, in, 1644.

pauper, on application for admission to defend as, 156; to sue, 40.

pending suit or matter, must be made in, 891.

perpetuate testimony, must be filed with bill to, 394, 1578.

printing, 902, 903.

copy for printer, 902.

costs of printed copies, 903.

time for, where issue joined, 902; in case of motion for decree, 826, 902.

prisoner, of, before whom sworn, 745.

quotations in, how indicated, 895.

sale, of, result of, 1272.

scandal in, remedy for, 894.

schedules to, how referred to 895.

alterations in, how authenticated, 896.

search for, where necessary, 899, 1598.

sequestration for not answering, on issue of, 494.

Sergeant-at-Arms, on application for, where defendant in contempt for not answering, 494.

service of, contents of, 898.

(See SERVICE.)

settlement of, by counsel, costs of, 901, 1439.

signature of deponent to, 897.

official, of, before whom sworn, 897.

substitution of purchaser, on application for, 1285.

sums, how expressed in, 895.

sureties, of, in case of receiver's recognizance, 1739 and n.

sworn, before whom, 891, 892.

jurisdiction, when taken out of the, 892 and notes.

solicitor in a cause, irregular if before, 891.

taking off file, because scandalous or irrelevant, 785, 894.

title of, 893.

amendment of bill, effect of on, 893, 1608.

error in, how rectified, 893 and n.

translation of foreign into English to be filed with original, 2176 n.

unnecessary matter in, costs occasioned by, 895.

withdrawal of, 898, 1598.

written, how to be, 895.

AFFIRMATION,

affidavit, when taken instead of, 898.

affirmat to, form of, 898.

answer, when taken on, 746, 750.

form of, 894 n.

Moravian, Quaker, or Separatist, how taken, 898.

AFTER-ACQUIRED PROPERTY,

condition as to, may be annexed to bankrupt's discharge, 62 n.

former difference as to, between bankrupt and insolvent debtor, 62.

of bankrupt, in what cases liable for his debt, 61.

[The references are to the star paging.]

AGENCY,

trustees not allowed commissions for, 1285; except in India, 1235.

AGENT,

agreement relating to land entered into by, how alleged, 365 n.
communication with, when privileged, 576.

(See PRIVILEGED COMMUNICATIONS, PROFESSIONAL CONFIDENCE.)

costs of, 1411.

discovery, 324, n.

expenses occasioned by employment of, when allowed, 1288-1289.

fraud or collusion, charged with, when made a party, 298.

interpleader by, 1565.

notice to, notice to principal, 674, 675.

party usually not a necessary, 195, 196, 247, 269 n., 295, 298.

but agency must be proved, or appear, 196.

principal may sue without agent, when, 196.

privileged communications, 573 n.

production of documents in possession of, when wrongfully withheld by, 1826, 1827
privity, not destroyed by employment of, 325.

specific performance not necessary party to suit for, 295, 298.

may be joined when he has received the deposit, 297.

substituted service of bill on, when allowed, 447.

title deeds, holding, not a necessary party, 299.

town, of solicitor, name and address to be indorsed on pleadings, summonses, writs,
and other proceedings, 454.

trustee of, not a necessary party, 247.

AGREEMENT,

admissions by, 848, 849.

(See ADMISSIONS.)

admission of, neutralized by insisting on statute of frauds, 840 n.

"agreed," imports writing, 369 n.

antenuptial, suit to establish, discovery in, 570.

arbitration to refer to, cannot be specifically performed or pleaded, 670 and n.

but proceedings may be stayed, 670, 671, 1857.

assignment of wife's chattels, real, for, effect of, 127.

breach of, when restrained, 1658-1657.

enforceable, must be proved to be, if not admitted, 657.

land, relating to, how alleged, 865.

letters contained in, how alleged, 865.

parol, specific performance of, where decreed, 847.

plea of, 671.

statement of, in bill, altered to accord with that in answer, 408.

suit, to put an end to, plea of, 672.

AID,

answer in, of plea, 625.

ALDERNEY (ISLAND OF),

not beyond seas within 21 Jac. I. c. 16 (statute of limitations), 648.

ALIAS DISTRINGAS. (See DISTRINGAS.)

to enforce appearance of corporation, 477.

ALIEN,

birthplace of, discovery as to, must be given, when, 5, 564, 565.

copyright of, when protected, 46.

descendant of British subject settled abroad, when an, 50.

discovery whether devisee is, must be given, 558.

enemy, how constituted, 49-52.

discovery, cannot file bill of, 51.

effect of person so being, 46, 47, 48, 51.

objection that plaintiff is, how taken, 52; not encouraged, 49.

plea of, form of, 52.

proof of debt due to, admitted, but dividend postponed, 51, 52.

property of, where others may sue for, 50.

resident in England, suit by, when permitted, 49, 50.

wife of, sued without him, 178, 179.

foreign contracts, suits by, on, are governed by foreign laws, 48.

land, power of, to hold, 47.

license, 49.

"naturalization act, 1870," 47.

[The references are to the star paging.]

ALIEN—continued.

ne cœrat regno, when issued against, 48, 49, 1708.
objection that plaintiff is, 52.
plea that plaintiff is, 52, 58 and in n., 630.
prisoner of war, suit by, when permitted, 49.
property, capacity to hold, 47.
security for costs, when required from, 31, 32, 53.

(See Costs, SECURITY FOR.)

suits by, 45–50; when permitted, 45.
war, effect of, on pending suit, 52.
suits between aliens, 48, 49.
wife of, may be sued without him, when, 88.
wife may sue alone, when husband is an, 88, 179.

ALIENATION,

property of, when restrained, 1651.
injunction, usually granted *ex parte*, 1651, 1685.

ALLEGATION,

form of, where discovery of communications with reference to a fraud sought, 578.

general, of collusion or fraud insufficient, 824.

general, when sufficient to let in proof of specific facts, 853–855.

where character, behavior, or quality of mind is in question, 853.

where notice is charged, 854.

positiveness required in, 330; demurrer, for want of, 360, 582.

responsive, in civil and ecclesiastical courts, different from answer, 711.

sufficient to found decree upon, must be, 361.

ALLOTMENT,

partition suit, of shares in, 1158.

ALLOWANCE (JUST). (See JUST ALLOWANCES.)

ALLOWANCE (PENDING LITIGATION).

made, when, and how, 1202.

ALMANACK,

course of, judicially noticed, 546.

ALTERNATIVE DEFENCES,

permitted, when, 718, 714.

differ from inconsistent defences, 718, 714.

ALTERNATIVE PRAYER (OF BILL),

permitted, when, 384.

double pleading, when allowed in consequence of, 608, 609.

must have an order to warrant it, 609.

AMBASSADOR (FOREIGN),

does not represent foreign state in suit, 20, 142 n.

immunity of, 142 and n.

servants of, may be required to give security for costs, 32.

stat. 7 Anne 12, with respect to, 142.

AMENDED BILL,

address of, 402.

admission, reading as, 830.

amended and original bill one record, 402.

answer to, 729, 776, 777.

(See ANSWER.)

appearance to, when necessary, 480 n., 539.

entry of, by plaintiff, 461.

demurrer to, 582, 588.

(See DEMURRER.)

effect of, 402 n.

election, time for, in case of, 816.

exceptions for insufficiency to answer to, 762.

(See EXCEPTIONS.)

fee on filing, when reprint necessary, 422.

filings, 422, 423.

indorsement on copy for service of, when necessary, 446.

interrogatories to, 485.

(See INTERROGATORIES.)

irregularity, when taken off file for, 425–427.

plea to, 680.

(See PLEA.)

[The references are to the star paging.]

AMENDED BILL — continued.

printed, when necessary to be, 422.
 process by service on formal defendant of copy of, applicable to, 428.
pro confesso, proceedings to take, 523, 524.
 original and amended taken together, 402.
 service of, 429, 446 and n.
 signature of counsel to, 313, 422.
 not required, if amendment merely clerical, 313 n.
 (See SERVICE.)
 stamp on copy of, for service, 448.
 traversing note, filing of, to, 514.

AMENDED INFORMATION,

printed, when necessary to be, 422.
 signature of Attorney-General and counsel to, 311 n., 422.

AMENDMENT OF ANSWER, 778–783.

form, when permitted as to matters of, 778, 779 and in n.
 hearing, at, 782 n.
 made, how, 780 n., 784.
 order for, how obtained, 783.
 permitted, instances when, 778.
 re-swear, generally necessary after, 783.
 supplemental answer how usually filed instead of, 779.
 in cases of mistake or ignorance of facts, 780.
 other circumstances under which supplemental answer will or will not be allowed, 780 n.
 court cautious in allowing supplemental answer, 780 and n.
 on application for leave to file, facts to be stated specifically and verified, 781, 782 n.
 supplemental answer not allowed to contradict statements in first answer, 781 n.
 must be confined to correction of mistake sworn to, not permitted to set up new ground of defence at hearing, 780 n.
 defendant cannot controvert facts in answer by cross-bill, 782.
 within what time application must be made, 782.
 in what cases answer may still be amended, 782, 783.
 when supplemental answer to be deemed sufficient, 784.
 motion for leave to file supplemental answer must be supported by affidavit, 782 n.
 (See SUPPLEMENTAL ANSWER.)
 rule of United States' courts concerning, 778 n.
 material changes in answer allowed only under special circumstances, 778 n., 779.
 allowed when new matter discovered, 778.
 in case of surprise, 778.
 of misrepresentation, 778.
 by limiting admission of assets, 779.
 not where facts correctly stated, but law mistaken, 779.
 not where prosecution is pending, 779.

AMENDMENT OF BILL, 401–427.

abatement not remediable by, 1509 n.
 adjournment of hearing on account of, 976.
 alteration of parties by, 403–407.
 defendants, addition of, permitted at any time before decree, 292, 293, 405, 406, 409, 410; after, 405, 406.
 evidence against added defendants, 294, 406, 410.
 hearing, when leave given for, at, 245, 292, 293, 388, 405, 417, 418.
 order for, when of course, and form, 295.
 defendants, by striking out unnecessary, 301.
 by waiving relief against, 298.
 plaintiffs, by addition of, after answer, 405.
 when effect would be to make a new case, 405 n.
 not of course after answer, 295, 405.
 plaintiffs, by striking out, after appearance, 404.
 answer, before, 409; after, but before replication, 411, 413, 414.
 appeal, leave to amend, when given at hearing of, 418 and n.
 application for, when of course, 409–414; when special, 414–416, 420.
 costs of special application, 414.
 case, entirely new, cannot be made by, 425 and n., 426.
 changing suit at Law into suit in Equity, and vice versa in Massachusetts, 403 n.
 class suit, leave when given for conversion of ordinary suit, 245, 246.
 clerical error for rectification of, allowed at any time, 410 and n.

(The references are to the star paging.)

AMENDMENT OF BILL—continued.

- order for, how obtained, and form, 410.
- closing of evidence after, irregular, except to add parties, 404 n., 416.
- consistency, 418 n.
- contempt, for want of answer, purged by, unless plaintiff's rights specially reserved, 425, 509.
- costs of, under order of course, 411, 423.
 - costs in cause, when, 428.
 - defendant's of parts of bill struck out by amendment, 425.
 - irregular amendment occasioned by, 414.
 - new case, where made by, 426.
 - payment of, 428 and n., 1456.
 - counsel, by addition of name of, 312 n., 399.
 - course, order for, when made as of, 409–417, 598.
 - application for, how made, 414.
 - form of, when no further answer required, 411.
 - irregular, after demurrer overruled, and pending appeal, 411, 601.
 - after notice of motion to dismiss for non-prosecution, 412, 416, 804.
 - pending inquiry in infants' suits, 70 n., 411.
 - replication, filing of, 416.
 - not irregular before motion for decree set down, 416, 761.
 - amendment under an order on allowance of demurrer, 597, 598.
 - second, after answer, when irregular, 418, 414.
 - court or judge, must be addressed to some, 402.
 - creditor's suit for administration of real estate, 236 n.
 - cross-bill by infants not permitted after dismissal of, 174.
 - demurrer, after, 593; costs on, 594.
 - time for obtaining order for, 411, 594.
 - demurrer, after allowance of, when permitted, 597.
 - without prejudice to notice of motion for injunction, 419, 1602.
 - where demurrer was partial, 597, 789.
 - demurrer, argument of; leave to amend, when given on, 289, 419 and n.
 - demurrer, after overruling of, 601.
 - answer, not a waiver of the right to, 601.
 - appeal by defendant from overruling of, not barred by amendment, 601.
 - pending appeal from the overruling, 411, 413 n., 601.
 - demurrer and plea, amendment after, 789.
 - disclaimer, after, 709
 - discovery (bill of) not convertible into bill for relief, by, 408.
 - plaintiff cannot be added to by, 405.
 - dismissal for non-prosecution, prevented by, 804, 805.
 - discretion, 402 n.
 - exceptions, after submission to, 414, 770, 775.
 - facts stated in answer, introduced by, when, 407 and n.
 - facts occurring since filing of bill, when introduced by, 406, 407.
 - Federal Courts, in, 417 n., 2382.
 - hearing, leave given at, when, 417–419.
 - addition of parties, 392, 405, 418.
 - alteration of prayer, 388, 417, 418.
 - alteration of statements of bill, 418.
 - appeal, of, 418, 419.
 - infants' suits, in, 72, 73, 418.
 - interlocutory applications, 419 n.
 - injunction not dissolved by, unless record altered, 423, 424 and n., 1675.
 - notice of motion for, waived by, when, 424, 1602, 1671.
 - inquiry which of two suits most beneficial for infant, not stayed by, 70, 411.
 - insufficiency of answer waived by, 418, 762.
 - unless amendment merely formal, 762.
 - or after exceptions allowed or submitted to, 414.
 - irregular, proceedings in case of, 425.
 - irregular order for, valid until discharged, 421, 804.
 - effect of, on motion to dismiss for want of prosecution, 804.
 - irregularity in order for, how waived, 421.
 - latitude allowed in, 407.
 - as to parties, 405 and n., 406 n.
 - limitations, statute of, effect upon, 236 n., 418 n.
 - litis pendens* created by, from what date, 402, 403.
 - made, how, where no reprint, 422.
 - matter occurring subsequent to commencement of suit, as to, 408 and n.

[The references are to the star paging.]

AMENDMENT OF BILL—continued.

- cases where new, may be introduced by, 406 n.
misjoinder, in cases of, 284, 304, 417.
mode of making, 422 n.
when by interlining, 422 n.
motion for decree, after unsuccessful, 826.
after service, but before setting down of notice of, 819.
ne exeat, not dissolved by, 424, 1714.
new case, cannot be made by an amendment of bill, 417 n., 418 n., 425.
new defence may be made after, 409.
new next friend of infant, for introduction of, 77.
next friend of infant, by insertion of, 68.
notice of motion waived by, 424, 425, 1602, 1671.
oath, after answer on, amendment of bill waiving, cannot be made, 417 n., 736 n.
order for, always necessary, 409.
when made, as of course, 409–414, 598.
when on special application, 414–417.
form of, for, if no further answer required, 411.
effect of, on right to move to dismiss, if not acted on, 801, 802.
original bill, when permitted to be read by defendant after, 839.
perpetuate testimony, bill to, not convertible into bill of discovery by, 1575.
personal representatives, added by, 407.
plaintiff, change of, by, 242 n.
plea after, 411, 692; costs, 692.
time for obtaining order for, 411, 692.
plea supported by answer, after, 624.
plea, after allowance of, order for, is special, 789.
argument of, leave to amend, when given on, 290, 419, 695, 698.
pending judgment on, order for, irregular, 420.
replication to, after order for, is special, 420.
plea overruled, amendment after, 418, 420.
practice as to amendments in United States and some of the State courts, 409 n.,
422 n., 424 n.
priority of original bill over cross-bill, lost by, 408, 1552.
so also over supplemental statement, *semele*, 403 n.
pro confesso, order to take bill, vitiated by, unless plaintiff's rights specially reserved,
410 n., 425, 521–528.
production of documents, application for, not waited by, 1821.
effect of amendment, on the right to, 1829.
re-amendment, practice on, 423 and n.
receiver, notice of motion for, waived by, 424, 1602.
record, original and amended bill one, 402, 406 n.
taken *pro confesso* together, 402.
where plaintiff amends after answer, 402 n.
recorded, how, 423.
replication, after, 416, 417, 883; withdrawal of replication, when necessary, 474,
834.
reprint of bill, when necessary in consequence of, 422.
repugnancy between original and amended bill, 408, n.
relief (bill for), not convertible into bill of discovery, by, 408.
revivor, after, 1545.
rules, general, as to defects that may be amended, 401 n.
generally in discretion of court, 401 n.
allowed with liberality until proofs closed, 401 n.
difference between matters depending upon parol proof and written instruments,
401 n.
as to matters known to plaintiff before filing bill, 401 n.
great caution as to amendments where bill is on oath, 401 n., 424 n.
amendment to sworn bill must be consistent with original bill, 408 n., 424 n.
application to amend sworn bill should be accompanied by affidavit to explain
mistake, 424, n.
substituting new plaintiff for original, 404 n.
second amendment, where first made on argument of demurrer, 598.
second order to amend, 414; practice on, 423 and n.
security for costs, when required after, 29, 30.
service of bill after, 405 n., 410 n.
service of order for, 422.
signature of counsel to, 812, 813, 422.
not required when amendment merely clerical, 818 n., 410 n.

[The references are to the star paging.]

AMENDMENT OF BILL — *continued.*

- single creditor's bill, where permitted, 286 n.
- special application for, costs of, 414.
- special order, when necessary, 414—417.
 - application for, made by summons, 414.
 - affidavit in support of, 414.
- time for obtaining order for, where of course, 409, 412.
 - where special, 414, 417.
- enlargement of, how procured, 421.
- vacations not computed in, 412.
- time for, not increased by adding parties, 415.
 - or because defendant out of the jurisdiction, 154.
- time for making amendment after order obtained, 420.
 - enlargement of, how obtained, 421.
 - vacations not computed in, 421.
- undertaking of defendant when a discharge of, 424.
- witnesses, when allowed, after examined, 406 n.

AMENDMENTS OF BILL AND EXCEPTIONS,

- order to answer both together, 413, 769, 775, 776.
 - (See **ANSWER.**)

AMENDMENT OF DEMURRER,

- when permitted, 584.
 - at the argument of the demurrer, 597.
 - clerical error, in case of, 591, 600 n.
 - less extensive, in order to make demurrer, 584, 600.

AMENDMENT OF EXCEPTIONS,

- where permitted, 763, 764.

AMENDMENT OF INFORMATION,

- affidavit in support of application for, by whom made, 415.
 - reprint, when required on, 422.
- signature of Attorney-General and counsel to, 812 and n., 422.

AMENDMENT OF INFORMATION AND BILL,

- where plaintiffs have no individual interest, 11.

AMENDMENT OF INTERROGATORIES, 486, 487.

- how made, 486.
- order for, how obtained, 409 n., 486.
- service of amended interrogatories, 486.
- time for answer after the amendment, 487.
- waiving answer, for purpose of, 486

AMENDMENT OF MASTER'S REPORT, 1321, 1322. (See **REPORT.)**

AMENDMENT OF PETITION,
allowed when, and how effected, 1610.

AMENDMENT OF PLEA,
costs on allowance of amended plea, 704, 705.
leave for, how obtained, 704.

- evidence in support of application, 704.
- permitted, when, 707.
 - not, when plea supported by answer, 708.
 - where no substantial defence appears, 704.
 - where plea already amended, 704.
- pleading *de novo*, 708.
- time allowed for making amendment, 708.

AMENDMENT OF REPLICATION, 881.
order for, how obtained, 881.

AMERCEMENT,
of sheriff for not making return to writ, 470.

AMERICA, (UNITED STATES OF). (See **UNITED STATES OF AMERICA.**)

AMOUNT IN CONTROVERSY,
effect upon suit, 248 n., 329 and n.

ANALYSIS,
directed in patent cases, 1642 n.

ANCESTOR,
admission of, binds infant heir, 171.

[The references are to the star paging.]

ANCIENT LIGHTS,

assessment of damages in cases of, 1080 n.
increase of, effect of, 1638 n.
obstruction of, when restrained, 1688 and n.

ANNUITANTS,

receiver, when not appointed at instance of, 1724 n.
when necessary parties, 228.
when not necessary parties, 214.

ANNUITIES,

arrears of interest, allowed at what rate on, 1255, 1256.
arrears of, parties to suit for, 262.
bond to secure interest on, allowed, at what rate, 1255, 1256.
charge of, devisee not made trustee by, 653.
costs of suit for, where no default, 1406.
grant of, when impeached by bill of review, 1582.
inquiry as to, in administration suit, 1214.
land, not decreed on bill for, 380.
provision for keeping down, where fund in court, 1798 n.
purchaser of, when liable to pay interest, 1277.
release of wife's, by husband, effect of, 123.
suit for, advance of, when directed, 972.
wife's plea of husband's insolvency in joint suit for, 108 n.

ANSWER, 711-786.

acceptance of, contempt waived by, 509.
costs of contempt, where costs in cause, after, 509.
costs of exceptions for insufficiency, right to, not waived by, 774.
filing replication, by, 766.
irregularity, waived by, 784.
service of notice of decree, by, 766, 820.
taking office copy, when not, 506 n., 508, 784 n.
accounts, how set out in, 724 and n., 725, 727.
reference to, in answer, when sufficient, 724.
accounts in, not admitted by plaintiff giving notice to read answer as evidence on motion for decree, 822 n.
admissions in, 837-848, 850 n., 852 n., 855 n., 1029 n.
(See ADMISSIONS.)

when bill charges facts within defendant's knowledge, 887 n.
not within defendant's knowledge, 837.

effect of answer not under oath, 887 n., 845 in notes, 846 n.

affidavit, when answer may be treated as an, 821, 888, 1688, 1678, 1677, 1736.
affirmation, when taken on, 746, 749, 750.

form of commission to take, 750.

alteration in, how authenticated, 743.

where answer taken by commission, 751.

amended bill, to, 729, 776, 777.

amendments, should be confined to, 729, 776.

unless new case made, 776.

costs of, where vexatiously required, 777.

custody for contempt of defendant in, 509.

exceptions to, 761.

(See EXCEPTIONS.)

form of, and formalities attending, 776.

heading of, 731.

impertinence in, 727, 728; costs of, 776.

one record with answer to amended bill, 729.

time for, when interrogatories filed, 788, 777.

when answer voluntary, 789, 777.

extension of time, how procured, 740, 777.

amendment of, 777, 778, 779 n., 782, 783.

(See AMENDMENT OF ANSWER.)

amendment of bill after answer, 411-415.

amendments and exceptions together, order for answer to, how and when obtained or defeated, 418, 769, 775.

contempt waived by, 510.

time for putting in answer, under, 738, 739, 769, 775.

appeals to, in House of Lords, 1494-1497.

arbitrator, of, to bill to impeach award, 297.

attachment for want of, 488-490, 499, 742.

(See ATTACHMENT.)

[The references are to the star paging.]

ANSWER — continued.

attestation of honor, when put in upon, 735, 738, 746.

(See HONOR, ATTESTATION OR PROTESTATION OF.)

waiver of omission of, must be express, 785.

Attorney-General, of, 139, 735.

proceedings in default of, 497.

(See ATTORNEY-GENERAL.)

bad health, defendant unable to answer from, allowed more time, 178.

bankrupt, of, not to be read against his assignee, 1057.

bar of the court, proceedings when defendant brought to, for want of, 491-496, 500.

benefit, insisting on the same, by answer, as by plea or demurrer, 714 and n.

bill, statements in, which must and may be answered, 716.

blind person, of, how taken, 746.

certainty required in statements of, 714.

co-defendant, read against, when, 841 and n., 842 n., 1839.

in favor of, 841 n.

commission, when taken by, 748-753, 748 n.

(See ANSWER, COMMISSION TO TAKE.)

committee, of, on behalf of lunatic, 175, 737, 753, 754.

admission, whether it can be read as an, 178, 841.

form of, 178; heading of, 731; jurat to, 754.

oath or signature, how put in without, 737.

signature to, 733.

conclusions of law need not be stated in, 712, 719.

but if stated, facts cannot be used to establish different defence, 712, 713.

contempt for want of, how cleared, 507; how waived, 755.

order to clear, when necessary, 508.

costs of contempt, payment of, 1455.

party in, cannot apply for further time, 739 n.

corporation of, aggregate, 735 and n., 746.

must be full, 146.

proceedings in default of, 497.

put in under common seal, 146 and n., 717 n., 735 and n., 746, 843 n.

proceedings where custodian of seal refuses to affix it, 146.

oath to answer of when object is to obtain dissolution of injunction, 738 in n.

costs, answer read by defendant on question of, 848, 1380.

of separate answers of persons appearing by same solicitor, 730, 1448.

improper answer put in by guardian *ad litem*, of, 163.

costs of, 729, 730, 741, 752, 757, 758, 773, 777, 977 n., 1408.

craving leave to refer to document, effect of, in answer, 725, 838, 1832.

credit given to, where contradicted by only one witness, 848-847 and in notes.

creditor's bill, to, 726 n.

cross-examination on, as to documents, not allowed, 1828.

injunction when permitted on motion for, 1670.

motion for decree on, 823.

cross-bill to, 1551, 1552.

evidence, time for, in original suit, enlarged till filing of answer, 1552.

staying proceedings in original suit, till filing of, 1552

time for, enlarged till after answer to original bill, 1551, 1552; or production of documents in original suit, 1552, 1558.

cross-bill of discovery to, costs of, 1555.

treated as answer to bill of relief, 840, 1555.

dates, how expressed in, 743

deaf, or deaf and dumb person, of, how taken, 747.

default, in putting in, consequences of, 488, 739.

defence by, when appropriate, 534

demurrer, not ordered to stand for answer, 600.

partial, when accompanied by answer, 581, 583, 589.

exceptions to such an answer, 590, 601, 760.

(See EXCEPTIONS.)

does not lie to an answer, 542 n., 758 n.

denial by answer of plaintiff's case or interest does not relieve from obligation to answer fully, 720-722.

denial, general, in answer, when it must be accompanied by reference to particular circumstances, 726.

diligence must be used to acquire information, in order to put in, 724.

limitation of this rule, 724 n.

how far must inspect books and papers for information, 724.

direct, must be, 725.

[The references are to the star paging.]

ANSWER — continued.

- discharge in answer, as to payments, when sufficient, 1229.
- disclaimer, answer accompanying, 706.
- inconsistency between answer and disclaimer, effect of, 709.
- discovery, answer to part of, accompanied by plea to relief, bad, 625, 626.
- discovery, objections to, by answer, 582, 716-723.
- belief in validity of, must be sworn to, 589, 716.
- defence, which might have been pleaded, cannot be thus taken, 722, 723.
- difference between objecting by answer and by plea or demurrer, 717.
- distringas*, writs of, to enforce, 497.
- documents, reference to, in answer, unnecessary, if defendant has lost his interest, 724.
- documents, how set out in, 725, 727; how referred to in, 725.
- documents, answer as to, 485 n., 721 and n., 724, 725
- documents, answer as to possession of, when abroad, 725, 1818.
 (See PRODUCTION OF DOCUMENTS.)
- documents not in court, should not be referred to, by answer as stating defendant's case, 731.
- effect of, when only one witness in opposition, 843 n.
 when responsive and when not responsive, 843 n.
 when not positive, but evasive, or on belief, 845 in notes.
 when case heard on bill and answer, 845 in n.
 when facts not stated positively, or as of defendant's own knowledge, 845 in n., 846 n.
 circumstances that may overcome, 846 n.
- engrossment of, 742.
- entry of, in decree or order, 1003.
- evasive, costs of, 785; taking off the file, 785.
- evidence, usually made, 739, 740, 843 n.
- exceptions for insufficiency to (see EXCEPTIONS FOR INSUFFICIENCY).
- facts to be proved, statement of, in, 711, 853.
- facts occurring after bill filed, 718 n.; after answer filed, 780.
- facts stated in, when introduced into bill by amendment, 406.
- fees on taking, 744 n.
- file, taking answer off, 730, 788 n., 748, 785.
 (See FILE, TAKING OFF.)
- filings, 731, 732, 754, 755.
 (See FILING.)
- right to security for costs waived by, 30.
- foreign government or state, when required from, 19, 141, 142.
- foreigner, of, how taken, 746, 747.
- forfeiture, objection by answer that discovery would expose defendant to, 716.
- form of, 711 and n., 729-738.
 demurrer and answer of, 589.
- plea, where accompanying, 685; where in support of plea, 685.
 by two or more persons, 729 and n., 780.
 in case of husband and wife, 733 n.
- four insufficient, costs in case of, 773, 1439.
- fourth answer irregular, after a third insufficient, 772.
- fraud, denial of, by answer, not a bar to discovery as to facts alleged as evidence, 721.
- frauds, statute of, benefit of, had by, 655, 656.
 but waived, if not claimed, 656.
- frivolous, 854 n.
- fully, defendant submitting to, must answer, 720, *et seq.*, in notes.
 exceptions and limitations of rule, 720 and n., 721 and n., 722.
 how rule affected by order Aug. 1841, Ord. xx. 4, 722.
 this order adopted in United States courts, 722 n.
- rule no longer to apply in United States courts, where defendant could protect himself by plea from answer, 722 n.
- bond fide purchaser for value, 722 n.
- further answer, 776-777.
 (See FURTHER ANSWER.)
- general nature of, 711-729.
- twofold character of, 711.
 how used, 711 n.
- guardian, *ad litem*, of, on behalf of infant, 160, 161.
- admission, read against guardian as, 169, 841.
- filings of, 755.

[The references are to the star paging.]

ANSWER — continued.

- heading of, 732.
improper, costs of, 168.
married woman, when an infant, 168, 185, 498, 754.
oath or signature, how put in without, 169 n., 787, 753.
signature to, 733.
sworn, how, 169 n., 753.
of lunatic, where committee has an adverse interest, 175, 737, 753.
of person of unsound mind, 178, 737, 753, 754 and n.
admission, whether it may be read as, against defendant, 178, 841.
filing of, 755.
heading of, 731; signature to, 788; how sworn, and jurat to, 758, 754.
oath or signature, when put in without, 787, 753.
how appointed, 161.
duty of, 163 and n.
habeas corpus, to bring defendant in contempt for want of, to the bar, 490—493, 501
(See *HABEAS CORPUS, WRIT OF.*)
haec verba, statement of documents in, 725, 732, 733.
heading of, 731.
amended bill, to, 781.
amendment of, when permitted, 783.
committee, of, 731.
defect in, remedy for, 730.
female defendant married since bill filed, of, 731.
guardian, where put in by, 731.
husband and wife, of, 731.
impertinence and scandal in, 732 n.
infant, of, 731.
irregularity in, taking answer off the file for, 731.
lunatic, of, 781.
misnomer in title, correction of, in, 731.
several defendants, of, 731.
unsound mind, of person of, 731.
heathen, of, how taken, 735.
form of commission to take, 736.
husband, of, wife not bound to join in, 498.
pro confesso, bill taken upon, 524.
wife's inheritance, not bound by, 185, 528.
husband, separate answer of, when necessary, 180, 458.
order for, how obtained, 180, 499.
should be obtained before answer filed, 500.
husband and wife, joint answer of, 498; heading of, 731.
how sworn, 754 n.
her personal or separate estate bound by, 185.
but not her inheritance, 185.
or any new interest she may take on husband's death, 188.
proceedings in default of, 499.
pro confesso, bill taken, for want of, 523, 524.
husband and wife, joint answer of, contempt of husband for not filing, how cleared, 181.
idiot, of, by committee, read against him, 177, 178, 841.
ignorance, statement of, in answer, when impertinent, 716.
imbecile person, without oath or signature, not received, 737.
immateriality, objection by answer, on the ground of, 715—718, 717 and n.
account, in cases of, where assets admitted, 718.
private affairs, where questions relate to defendants, 719.
impertinence in, 728 and n., 732 n., 733, 758, 759.
(See *IMPERTINENCE.*)
inconsistent defences by, not allowed, 713.
effect of setting up, 718.
remedied, when occasioned by verbal inaccuracy, 713.
endorsement on, 754.
infant, of, 169, 737, 753; should not be required now, 169.
admission, not read against him as, during minority, 169 and n., 170, 839.
but may be against guardian *ad litem*, 841.
and against infant, on attaining twenty-one, 841.
how far bound by, or may not, answer sworn by guardian, 169 and n., 753 n.
exceptions for insufficiency do not lie to, 169.
form of, 169; heading of, 731; jurat to, 754.

[The references are to the star paging.]

ANSWER — continued.

- guardian *ad litem*, put in by, 168, 754.
 - although infant a married woman, 163, 188, 754.
 - taken, how, 753, 754.
 - new answer may be filed on his attaining twenty-one, 170; when allowed before that time, 175.
 - application for leave for, must be made without delay, 170.
 - consequence of, 175.
 - sufficient cause against decree, 175.
 - oath or signature, how taken without, 169 n., 787, 753, 754.
 - proceedings, in default of infant's answer, 498.
 - voluntary answer should be put in for, when, 169.
- information and belief, upon, 840 n., 2120 n.
- insufficiency in, exceptions for, 758-774.
 - (See EXCEPTIONS.)
- insufficient answer, amendment of bill after, 418.
 - acceptance of costs of, not a waiver of contempt, 508, 509.
 - not an answer for purpose of taking bill, *pro confesso*, 523, 524.
 - resumption of contempt, process after, 508.
 - taking bill *pro confesso*, 524.
- insufficient, answer from what time deemed, when exceptions submitted to, 786.
- interest, objection that defendant has none, not to be taken by answer, 299.
- interlineations in, how authenticated, 748.
- interpleader suit, in, read against co-defendant, 843.
- interrogatories, extent to which they must and may be answered, 716.
 - when defendant may decline to answer them, 583, 722.
 - not intended to be admitted, should be traversed, 725.
 - not bound to answer, unless founded on statements or charges in bill, 715 and n.
 - general interrogatory, 716 n.
 - to allegations of fraud in the bill, 716 n.
- invalid, of, how taken, 745.
 - fees on taking, 744 n.
 - time, enlargement of, in case of, 178.
- irregular, taken off the file, 784 and n.
 - acceptance of, a waiver of the irregularity, 784.
 - irregularity in bill, objection for, by, 782.
- issue, matter may be put in, by, 484.
 - use of answer in trial of issue, 848 n.
- Jew, of, how taken, 735; form of commission to take, 750.
- joint answer, when it should be put in, 729.
- jurat to, 745, 747, 753, 754.
 - (See JURAT.)
- liabilities for not duly putting in answer, 488, 521.
- limitations, statute of, insisting on benefit of, by, 712, 714 and n.
- lunatic, of, put in by committee or guardian *ad litem*, 178, 753, 754.
 - heading to, 781; jurat to, 753.
 - how taken, 754.
 - may be read against him, *quare*, 178, 841.
- marksman, of, how taken, 746.
- married woman, separate answer of, 178-185, 498, 499, 787, 754 and n.
 - filling, 754.
 - infant, guardian *ad litem* requisite, if she is, 168, 188, 754.
 - inheritance of, not bound by, 185.
 - lunatic, where husband, 181, 182, 500.
 - oath or signature, how put in without, 789.
 - order for, necessary, 182.
 - unless to husband's bill, 182, 499; or accepted by plaintiff, 182, 183; or she issued as a *feme sole*, 178, 179, 754.
 - plaintiff, when it may be obtained by, 181.
 - when and how obtained by husband, 180, 181; when and how obtained by wife, 181.
 - proceedings in default of, 499.
 - read against her or her husband, when, 184.
 - separate estate bound by, 185.
 - jurat, 754 and n.
 - taken, how, 182, 183.
 - time for, 183, 499, 740, 754.
- matters affecting defendant individually only need be answered, 719.
 - unless plaintiff involved in whole case, 719.

[The references are to the star paging.]

ANSWER — continued.

- occurring after bill filed, 713 n.
- messenger, order for, in contempt for want of answer, 490.
- mistake as to facts in, when corrected by supplemental answer, 780.
- mode of answering, 722, 723.
 - facts not within defendant's own knowledge, as to, 723.
 - remembrance, as to, 723.
 - words "belief or otherwise," effect of, 723.
- Moravian, or ex-Moravian, of, how taken, 746.
- multifariousness, objected to by, 846.
- new matter, 843 n.
- numbered paragraphs, divided into, 731.
- oath to, administration of, 746.
- oath, answer must in general be upon, 734 n., 746, 749, 838 n.
 - waiver of, 737 n., 785, 848 n.
 - oath or signature, answer without, 738 and notes, 737 and n.
 - how regarded, 738.
 - exceptions do not lie to, 738.
 - order for, how obtained, 738.
 - committee, of, 175, 737, 753, 754.
 - guardian *ad litem* of infant of, 169 n., 787, 754.
 - guardian *ad litem* of lunatic or person of unsound mind, 118 n., 737, 753, 754.
 - married woman, separate answer of, 737.
 - waiver of, by implication or expressly, 736 n.
 - effect of answer when oath waived, 736 n.
 - if waived at all, must be to every part of the answer and to the original answer, 736 n.
 - amendment of bill waiving oath after an answer on oath not allowed, 417 n., 736 n.
 - in what cases defendant may file answer on oath, though oath waived, 736 n.
 - oath may be waived as to some defendants and not as to others, when, 736 n.
 - effect of answers sworn to after oath waived, 736 n.
 - or admitted to be put in without oath, 736 n., 737.
 - no exception for insufficiency of answer when oath waived, 736 n., 738.
 - officer of corporation joined for purpose of discovery, 146; not read against corporation, 146.
 - official printed copy, how taken and made, 756—758.
 - charges for, 757.

(See OFFICE COPY.)

Pagan, of how taken, 736.

pains and penalties, objection by answer that discovery would expose defendant to, 716.

paper on which written or printed, 742.

Parliament, member of, proceedings in default of, 496.

(See PRIVILEGED PERSON.)

parties, objections for want of, taken by, 290, 291.

pauper, proceedings in default of, 501.

payment into court, when directed on, 1780—1782.

(See PAYMENT AND TRANSFER INTO COURT.)

peerage of person entitled to privilege of, 735, 738.

proceedings in default, of, 496.

(See PRIVILEGED PERSON.)

pertinency in, 728 n.

perusal of, by counsel, 732.

petition of right, to, 132.

plea, answer accompanying partial, extent of, 583, 691, 787—789.

exceptions to, 601, 760.

(See EXCEPTIONS.)

plea, answer in aid of, 625.

plea, answer in support of, 614—625, 685, 694.

(See PLEA.)

plea, when ordered to stand for, 700.

positive, when necessary, 722 and n., 723 and n.

as to facts not in defendant's knowledge, 723.

knowledge, remembrance, information, belief, 728 and n.

denying knowledge, but admitting belief, need not deny information, 723 n.

if defendant has information, must answer it and as to belief, 723 n.

what form of denial insufficient, 723, 724 and n.

general denial not sufficient, 726.

exception, 726 n.

[The references are to the star paging.]

ANSWER — continued.

- prayer for, 357 n.
- prayer in, 711 n.
- principle that defendant answering must answer fully, 720.
 - exception, where discovery not wanted for the decree, 721, 722.
 - printed copies of, charges for, 757; number of which may be taken by plaintiff, 757; by co-defendant, 757.
- printed copy, swearing and filing, 756, 757.
- printing, 756—758.
 - certified print, when to be left, 756.
 - consequence of neglect, 756.
 - copy for printer, how authenticated, 758.
 - foreign language, when answer in, 756.
 - paper and type, and mode in which printed, 756.
 - pauper, of, not printed, 756 n., 758.
 - plea and answer, in case of, 689.
 - save expense, not dispensed with in order to, 756.
 - schedules to, not printed, 756.
- prisoner, of, how taken, 745.
- prisoner for felony or misdemeanor, of, proceedings in default of, 198.
- process and proceedings in default of, 488—504.
 - resumption of, if answer insufficient, 508.
 - stay of, when ordered on appeal from overruling of demurrer, 1468.
 - submission to exceptions, after, 766.
- pro confesso* decree, answer when permitted after, 520.
 - time for application for, leave for, 527.
- pro confesso*, effect of filing answer after notice to take bill, 521.
- pro confesso*, order to take bill not discharged upon filing of answer, 523.
- production of documents in admission in, 1818, 1819, 1828.
 - (See PRODUCTION OF DOCUMENTS.)
- professional confidence, objection by answer on the ground of, 716.
- protestation of honor, where put in upon, 735, 788, 746.
 - (See HONOR, ATTESTATION, OR PROTESTATION OF.)
- Quaker or ex-Quaker, of, how taken, 746.
- read by Court, when and for what purpose, 842.
- reading as evidence, by co-defendant on motion for decree, 822.
- by defendant as evidence, only allowed by consent, if issue joined, 843.
 - except on questions of costs, 843, 1380, 1396.
 - by defendant on motion for decree, where notice given, 822.
 - by plaintiff on motion for decree, 821.
 - effect of giving notice, 822.
- reading answer against defendants as admissions, 821, 822, 828, 829, 839—848.
 - appeal, on, 1487.
 - bill and answer, when cause heard on, 828, 829.
 - motion for decree, when cause heard on, 821.
- receiver appointed before, when, 1784.
- record, not of, till filed, 754, 755.
 - complete, cannot be treated as answer on defendant's death, unless filed, 755 n.
 - reference to record, to be written on, 754.
 - reference to another document, for case, improper, 731.
 - relief upon, 1551 n. (a).
 - replication, after filing of, 829, 838—848.
 - (See ADMISSIONS.)
 - responsive, what is, 724 n., 848 n., 844, 845 n.
 - re-swearing of, 743.
 - amendment of, generally necessary after, 788.
 - cancellation of jurat, on account of, 748.
 - dispensed with by consent, when, 743.
 - review to bill of, 1584.
 - scandal in, 782 n., 733.
 - exceptions for, 758.
 - (See EXCEPTIONS. SCANDAL.)
 - schedules to, when used for the answers to the interrogatories, 727.
 - when in aid of defendant's own case, 727.
 - alteration in, how authenticated, 743, 751, 752.
 - impertinent, when, 725, 728.
 - addition of, by amendment, when permitted, 783.
 - office copy of, how obtained, 758.
 - paper on which written, 742.

[The references are to the star paging.]

ANSWER — continued.

printing, 756 n.

signature of defendant to, 783, 746.

of official before whom answer sworn, 746.

Secretary of State for India, of, 735.

Separatist, answer of, how taken, 746; form of commission to take, 750.
sequestration for want of, 473, 494-497.

(See SEQUESTRATION.)

sergeant-at-arms, order for, in contempts for want of, 452, 453.

(See SERGEANT-AT-ARMS.)

several defences may be set up by, 718.

if consistent, 713 and n.

signature of counsel to, 782, 783 and notes.

addition of, if accidentally omitted, 783, 788.

how affixed, 733.

separate answers signed by same counsel, when, 732 n.

signature of defendant to, 783.

must be signed by defendant though oath waived, 788 notes.

may be waived by plaintiff, 733 n., 737 n.

to answer of corporation, 738 n.

addition of, if accidentally omitted, 783.

affixed, how, 734.

attestation of, when put in without oath, 738.

committee, of, 733.

commission, when answer taken by, 751.

dispensed with, when, under special circumstances, 784.

guardian *ad litem*, of, 733.

place of, 746.

in case of schedules, 733, 784, 746.

signature to, of official before whom sworn, 746; to schedule, 783, 746.

statement of defendant's case in, 711, 712.

sufficiency of, admitted by amendment of bill, 418, 762.

filings replication, by, 766.

or service of notice of motion for decree, 820.

production of documents, application for, not an admission of, 1821.

sufficient, when answer deemed, 413, 769, 786.

(See SUFFICIENT.)

sums, how expressed in, 743.

supplemental answer, 779-782.

(See SUPPLEMENTAL ANSWER.)

court cautious in regard to, 780 and n.

practice as to, 780 n.

not allowed, when, 780 n., 781 and notes.

application, how made, and evidence, 781.

within what time, 782.

affidavit, 781, 782 n.

supplemental bill, to, 1585.

swearing of, 743-755.

in England and Wales, 744.

out of England and Wales, but within Queen's dominions, 744.

out of Queen's dominions, 745.

commission when taken by, 750.

before whom, and how sworn in Massachusetts and United States courts, 357 n.,
784 n., 743 n.

third insufficient answer, proceedings in case of, 771, 772.

time for putting in, 488, 788, 789, 742, 766, 769, 770.

amended bill, to, 688, 639, 777 n., 779 n.

amendment of interrogatories, after, 486.

amendments and exceptions, to, 738, 769, 775, 776.

cross-bill, to, 1551, 1554.

demurrer and answer, for, 592.

demurrer overruled, after, 600, 601; extension of, how procured, 601.

discharge of defendant not duly brought to the bar, after, 491, 740.

enlargement of, 488, 789 n., 740.

application for, how made, 741, 742, 1323.

attachment, issue of, pending application, irregular, 742.

consent to, 741.

costs of application, 741.

counsel's certificate, when granted on, 742.

[The references are to the star paging.]

ANSWER — continued.

- irregular, after attachment issued, 489, 742.
- motion for decree irregular, pending, 742.
- order for, drawing up and entry of, 741.
- principles on which time enlarged, 742.
- return of summons for, 741, 742.
- service, evidence, and hearing, 741.
- exceptions, after submission to, 766; extension of, how procured, 767; where submission is after filing further answer, 770.
- further answer for, after exceptions allowed, 769, 775; after exceptions submitted to, 767, 770, 775.
- (See FURTHER ANSWER.)
- husband and wife, joint of, 498.
- insufficient, where first or second answer held, 739.
- interrogatories served with bill, where, 480 n.
- jurisdiction, where bill served out of the, 453.
 - principles on which fixed, 452, 453.
 - stated in indorsement on copy of the bill, 439-441, 453.
- married woman, for separate answer of, 737, 740, 754.
- security for costs, pending giving of, 36, 489, 740.
- voluntary answer for, 739; to amended bill, 739, 777.
- title of, 781.
 - amendment of, when permitted, 783.
 - mismother, correction of, in, 731.
- title, objection by answer that discovery only relates to defendant's own, 716.
- traverse of interrogatories in, must be directed, and not by negative pregnant, 726.
- traversing note, leave to answer necessary after service of, 515, 740.
- traversing, process by filing, 491 n., 513, 514.
- twofold character of, 711.
- two witnesses to overcome, 713 n.
- unsound mind, of person of, 176-178, 498, 500, 841.
 - should not be required, 500.
 - guardian, put in by, 176, 178 n., 754.
 - heading of, 731; jurat to, 754.
 - prisoner for contempt, where, 178 n.
 - proceedings in default of, 498, 500.
 - read against him, whether it can be, 178, 821, 841.
 - vexatious, 354, n.
 - voluntary, what is, 711.
 - put in, where, 534; in case of infant, 169.
 - sufficient, when, 412.
 - time for, 739; enlargement of, 740-743; pending motion for decree, 812.
 - waiver of, 486.
 - written answer, 742, 756.
 - written, brief of, costs of, 758, 977 n.
 - paper on which written, 742.
 - printing and filing printed copy, 756.

ANSWER (COMMISSION TO TAKE), 748-758.

- abolished as to defendants within the jurisdiction, 744, 748.
- abroad, when necessary, where defendant is, 748.
- alteration in answer taken by, how authenticated, 751.
- caption of, 751.
- commissioners who may be, and nomination of, 748.
 - costs, where default made in attending to execute, 750.
 - execution of, 750, 751; where defendant demurs, 751.
 - form of, when answer not taken in usual manner, 748 and n., 749, 750.
 - insufficient answer after, 752.
 - order for, necessary, and how obtained, 748.
 - preparation and issue of, 749, 750.
 - return of, 749, 752, 758.
 - attachment to enforce, 753.
 - irregularities in, how remedied, 753.
 - time for, 749.
 - second, not issued without special order, and costs, when issued, 752.
 - terms of, must be strictly followed, 750.
 - notice, form of, 750.
 - on Sunday, 750.
 - war, 750.
 - where plaintiff has not joined, 750.
 - two commissioners must be present, 751.

[The references are to the star paging.]

ANSWER (COMMISSION TO TAKE) — continued.

 how long must wait for others, 751.
 form of swearing to answer, by commission, 751.
 signature of defendant in presence of commissioners, 751.

ANSWER TO INTERROGATORIES FOR EXAMINATION OF PLAINTIFF.

admission read as, 840.
 bill of relief treated as answer to, 1555.
 extent of, 1555.
 general course of procedure on, 1554, 1555.
 insufficiency or scandal in, exceptions for, 1555.
 printing, 758, 1554.
 staying proceedings till filing of, 1555.

APPEALS AND REHEARINGS, 1459–1491.

account, taking of, not suspended, pending, 1470.
 acting on order, not a waiver of right to appeal, 1467.
 adding to decree, from order, 1472.
 agreement not to appeal, effect of, on right to appeal, 1460.
 amend bill, leave to, where given at hearing of appeal, 418 and n., 1487.
 Appeal Court in Chancery, constitution of, 1471.
 appeal to House of Lords from, 1471.
 decisions of majority of court binding, 1471.
 power of, on application for new trial, 1189.
 rehearing before Court of Appeal, when allowed, 1472.
 of appeal motion, 1487.
 begin, who entitled to, 1484.
 when plaintiff, 1484 and n.
 when appellant, 1484 and notes.
 court may vary rules, 1484, 1485.
 bond, when required, form of, and effect of failure to give, 1480 n., 1481 n.
 briefs on, 1484 n.; appeal motion, on, 1487 n.
 causes of, 1461 n.
 Chambers, from order at, 1474.
 claimant under decree by, 1462.
 clerical mistake, not necessary for correction of, 1028, 1029.
 consent, from decree or order made by, not permitted, 978, 1459 and n.
 consent to consequential order, not a bar to appeal from original order, 1460.
 consolidation, 1120 n. (a).
 contemnor may, 507.
 contempt, 1009 n. (b).
 co-plaintiffs, by one, 1461 n.
 costs, no appeal for, 1468–1466, 1463, n., 1465 n.
 (See Costs.)
 except in special cases, or party entitled to, as matter of right 1463, n., 1465 n., 1466 and n.
 costs, appeal from non-insertion of direction to raise, 1491.
 costs on appeals, 1490, 1491.
 (See Costs.)
 costs, proceedings to recover not stayed by appeal, 1467.
 course, from orders of, 1474.
 creditors under decree, by, 1461, 1462.
 cross appeal when necessary, 1489.
 damages from order directing assessment of, 1082.
 Declaration of Title Act, from orders under, 1867, 1871.
 decree, or decretal order, only discharged by order made on, 1472, 1473.
 decree, any person bound by, may bring, 1461.
 delay in presenting appeal, effect of, 1497 n.
 demurrer, from allowance of, with leave to amend, by plaintiff, 598, 1459.
 by defendant, 598.
 demurrer, from order overruling, 597; amendment of bill not a bar to, 601.
 amendment of bill, under order of course, pending an appeal, irregular, 411, 413 n., 601.
 demurrer, dismissal of bill, by order of course pending, irregular, 601, 790.
 proceedings to enforce answer, when stayed pending, 1468.
 deposit on when required, and how paid, 1481.
 amount of, 1480.
 appeal motion not required on, 1487.
 pauper appellant not required from, 1482.
 payment of to respondent, 1482.

[The references are to the star paging.]

APPEALS AND REHEARINGS — continued.

repayment of, 1482; on compromise of appeal, 1482 n.
discretion, no appeal in matters of, 1462, 1463; on withdrawal of appeal, 1483.
distribution of fund, when stayed pending appeal, 1469.

enrolment, not permitted in Chancery, after, 660, 1019, 1475, 1476.

no enrolment, but equivalent in Massachusetts, 1475 n.
evidence on, 1003 n., 1485-1488, 1485 n., 1486 n., 1504 n.

(See EVIDENCE.)

exceptions for insufficiency, from order on, 774.

execution of decree or order, not stayed by, 1467 and notes.

practice as to in United States, 1467 notes, 1468 notes, 1470 n.

execution, appeal after decree carried into, 1476.

ex parte orders, from, 1474, 1488 n., 1602.

fees of counsel on, 1440 n.

foreclosure decree, from, enlargement of time for payment pending, 1000, 1470.

foreign tribunals, from, 664 n.

hearing of, 1484, 1485.

(See HEARING.)

further after trial, not stayed because appeal pending, 1147.

further after trial, from order at, 1149.

incumbrancer, by, for costs, when permitted, infant pauper, appeal by, 1464.

injunctions, in cases of, proceedings where stayed pending appeal, 1468, 1469.

irregular, leave for, how obtained, 1474.

grounds of, 1461 n.

interest, person with no, cannot appeal, 1461 n.

mere interest in costs, 1461 n.

persons injured by only one part of a decree, 1461 n., 1489 n.

in proving a will, 1461 n.

issue, appeals from orders granting or refusing, 1076 and n., 1077, 1462 n., 1463 n.

right to appeal not lost by proceeding to the trial, 1120.

appeal after trial of the issue, 1139, 1476, 1477.

judge, before what, heard, 1474, 1475.

judicial opinion under, Law of Property Trustees Relief Amendment Act, no appeal from, 1491.

jury, order for, 1078 n. (a), 1110 n. (a).

married woman appeals by next friend, 187.

or, by leave, as a pauper without, 187 n.

motion from orders made on, 1472, 1473, 1487, 1488, 1602.

abandoned motion, appeal treated as, on non-appearance of appellant, 1483, 1484, 1602.

briefs on, 1440 n.

costs of, 1468, 1469, 1602.

counsel's certificate not required on, 1487, 1608.

deposit not required on, 1482, 1487, 1603.

evidence, on, 1488, 1603.

(See EVIDENCE.)

notice of, how served and set down, 1480 n., 1487, 1603.

motion for decree, from order on, 827; right to begin on, 826.

new evidence on, 1485, 1487, 1504 n.

new trial from order on application for, 1139.

notice of decree, by person served by, 437, 1460.

number of hearings, no positive restriction of, 1475.

but special leave required after first, 1475.

application for leave, how made, 1475, 1476.

open, what is, on appeal or rehearing, 1484 and n., 1489 n.

as to party petitioning, only part of decree complained of is, 1489 n.

whole case to respondent, 1488, 1489 and n.

oral examination at hearing of, 913.

order initiatory, no appeal from, 1462 n.

directing a sale, no appeal from, 1462 n.

refusing a rehearing of a motion for instructions, &c., 1462 n.

ordering an account, 1462 n.

interlocutory, 1462 n.

for attachment, 1462 n.

directing an issue, 1076 n., 1077, 1462 n., 1463 n.

refusing to open proofs in a cause, 1462 n.

refusing to dissolve injunction, &c., 1462 n.

granting an injunction, 1462 n.

[The references are to the star paging.]

APPEALS AND REHEARINGS — *continued.*

directing a question of fact to be tried before judge and special jury, 1463 n.
on part of, or decree, 1489 n.

paper for hearing, when placed in, 1488.

passed and entered, none until decree or order, 1473.

pauper, by, 40, 1462 and n., 1482.

infant, if an, 39, 75, 1488.

married woman, if a, 39, 40, 1482.

payment, or transfer out, when delayed in case of, 1471, 1472.

persons not partie to record, by, 1460, 1461 and n.

not necessary should have appeared in court below, 1461 n.

one of several, 1461 n., although right of others lost, 1485 n.

shareholder, 1461 n.

petition of, 1477-1484.

address of, 1477.

contents of, 1477, 1611, 1612.

copies of, how obtained, 1488; charges and fees for, 1483 notes.

counsel's certificate on, 1478 and n.

one counsel, where permitted, 1478 and n., 1479.

effect of counsel's certificate in the United States, 1478 notes.

pauper's appeal, on, 40, 1482, 1483.

different suits, not of orders in, 1477.

fees on, 1480 n.

flat on, 1480.

form and statements of, 1477, 1478 and n.

hearing, usually not set down for, 1479.

irregular, taken off file, 1478; application for, how made, 1479.

preparation of, 1477.

presentation of, 1480.

leave, for, when necessary, 1479.

review, bill in nature of, bill of, when accompanied by, 1478, 1581.

signature of counsel to, when unnecessary, 140 n.

when necessary, 1478 n.

facts to be stated and verified, 1478 n.

withdrawal of, how obtained, 1483.

petition, from orders made on, 1472, 1477, 1611.

contents of petition of appeal, 1478, 1611, 1612.

counsel's certificate on, 1612.

deposit not necessary on, 1481, 1482, 1612.

evidence on, 1488, 1612.

(See EVIDENCE.)

setting down and service of, 1612.

piecemeal not allowed, 1467.

practice, mere, none from order concerning, 1462 n.

who to begin, or open and close, 826, 1484 and notes.

as to extent of proof, or fresh evidence admitted, 1485 n., 1486 notes.

as to evidence on appeals in United States courts, 1486 n.

in courts of Massachusetts, 1486 n.

on reversal of decree, 1491 n.

proceedings under decree or order nor stayed by, unless so ordered, 1467.

pro confesso, on what terms granted where cause heard, 528, 1459 n.

production not ordered pending appeal from order for production, Add. xxv.

purchaser under decree, by, 1461.

receiver, from order appointing, 1468 n., 1738 n.

record, 1003 n., 1504 n.

refund, security to, when taken, on distribution pending appeal, 1470.

rehearing, not allowed where defect otherwise remediable, 1120, n. (b), 1473.

only allowed on points existing in the decree, 1473.

subsequent inconvenience, not allowed in order to correct, 1478.

an appeal in chancery is a rehearing, 1459 and n.

application for should state what, 1462 n.

grounds for, 1120, n. (b).

matter of discretion, not of right, 1120 n. (b), 1472 n., 1479 n.

in what cases allowed in United States, 1472 n.

on the ground of newly discovered evidence, 1472 n., 1479 n., 1485 n.

petition for, 1120 n. (b).

second, 1475 n.

not allowed for mere purpose of contradicting witness, 1479 n.

nor to release one so as to make him competent, 1479 n.

[The references are to the star paging.]

APPEALS AND REHEARING — *continued.*

nor for error or mistake of counsel, 1479 n.

nor merely because injustice has been done, 1479 n.

party absenting himself, 1479 n.

remainder-man, after estate tail, by, 1461.

respondent, the whole case open to, as against appellant, 1488, 1489 and n.

secus, as to co-respondents, 1489.

as to other party, 1489 n.

sale, from order for, proceedings when stayed pending appeal, 1468; from order setting aside, 1491.

severance, 1461 n., 1485 n.

service of order, 1488; affidavit of service of, 1484.

security for return of distributed fund when required, on, 1470.

set down, how, 1483.

order to set down, 1481; and service thereof, 1488.

special case, from orders made on, 1478.

special jury, no appeal from order directing trial by, 1084, 1462 and n.

specific performance, in cases of, proceedings when stayed pending appeal, 1468, 1470.

stand over indefinitely, not allowed to, 1491.

statute, repeal, effect, 1459 n.

staying proceedings, pending, 800, 1467-1471.

(See **STAYING PROCEEDINGS.**)

supplemental bill, when appeal heard on, as well as on petition, 1478, 1581.

supplemental bill to carry decree into execution, where filed pending, 1487.

subsequent matter, not permitted on, 1478.

subsequent proceedings, taken before what judge, 1491.

time for, and enlargement thereof, 1476 and notes, 1498 n., 1497 n.

in United States courts, 1478 n., 1493 n.

trial of question of fact, appeal from order directing, 1082.

further hearing not stayed on account of pendency of, 1147.

trustees ordered to pay costs, by, not permitted, 1465.

Turner's, Sir George, Act, appeal from orders made under, 1478.

undertaking to pay costs of prosecution of decree, 1480.

vacation from special orders made in, 984, 1474.

who may appeal, 1460, 1461, and n.; in Massachusetts, 1491 n.

to full court from interlocutory and from final decrees, 1019 n., 1021 n., 1491 n.

within what time, 1491 n.

when omitted by accident or mistake, 1491 n.

on report, like proceedings on appeal, 1491 n.

practice as to appeals in United States courts, 1492 n.

limited to final decrees, 1492 n.

withdrawal of, 1483; costs on, 1483, 1484.

APPEALS TO THE HOUSE OF LORDS, 1491-1505.

any person aggrieved may appeal, and from any order, 1491.

although decree executed, 1467 n., 1476 n.

although quasi party, 1460 n., 1491 n.

although not a party, 1460, 1461 n.

abatement of, how rectified, 1501.

adjournment of, if not reached, 1498.

advance of, when directed, 1498.

application for, how made, 1501.

answer of respondent, 1495, 1497.

new, on amendment, leave for, how obtained, and costs, 1497.

time for, enlargement of, how obtained, 1495.

determination of session before expiration of, effect of, 1496.

order to, and service thereof, 1494; affidavit of, 1494.

answer, peremptory order for, when necessary, and how obtained, 1495, 1497;

after amendment of petition, 1497.

time limited by, 1494.

cases printed, on, 1498-1500.

contents of, 1499.

copies of, lodging, 1500.

counsel's signature to, 1499.

exchange of, 1500.

pleadings and proofs, appendix of, 1499.

preparation and settlement of, 1498.

supplemental, when necessary, 1501.

competency of, how objected to, 1498.

costs, practice as to, 1503, 1504.

(See **COSTS.**)

[The references are to the star paging.]

APPEALS TO THE HOUSE OF LORDS — *continued.*

counsel, number of, heard and allowed on, 1501.

cross, when necessary, 1496.

petition for, form of, and proceedings on, 1496.

recognition for costs not required in, 1496.

time for, 1496.

Declaration of Title Act, under, 1867, 1871.

dismissal of, for want of prosecution, 1496, 1497 notes.

on neglect to lodge cases, 1500.

dissolution of Parliament, effect of, on, 1496.

enrolment necessary for, 1019, 1492.

evidence on, 1499, 1504.

(See EVIDENCE.)

ex parte, when heard, 1495, 1501.

hearing, alteration of day for, how obtained, 1500.

conducted how, 1502.

default at, consequence of, 1501.

powers of the House of Lords, 1500.

production of documents at, 1499.

irregularity, counter-petition to dismiss, on ground of, 1498.

judgment, how given, 1502.

notice of, 1498; indorsement on petition, of time of giving, 1498.

order on, when and how made order of Court of Chancery, 1503.

parties, addition of, supplemental cases on, 1501.

pauper, by, 1482, 1498; admission to appeal as, how obtained, 1498.

petition of, 1493, 1494.

amendment of, on appellant's application, 1497; on respondent's, 1497.

leave for, how obtained, 1497.

counsel's signature to, 1494.

cross-appeal, in case of, 1496.

form, engrossment, and lodging, 1493, 1494.

indorsement of notice of appeal on, 1498.

presentation of, 1494; time for presentation, 1493.

prorogation of Parliament, effect of, on, 1498.

record, what constitutes, 1504 n., 1003 n.

recognition for costs, time for giving, and effect of default in, 1494.

prepared and taken, how, 1494.

substitute, by, when permitted, 1494.

when not required, 1494.

estreatment of, 1504.

setting down and service of order for, 1498.

setting down *ex parte*, on neglect of respondent to answer, 1501.

to answer amended petition, 1497.

to lodge printed cases, 1500.

standing orders, when dispensed with on, 1495.

staying proceedings, application for, how made in case of, 1471.

time for, 1492.

withdrawal of, 1497.

APPEARANCE, 536-541.

absconding, defendant, effect of, 456, 457, 458 in note, 459.

amended bill, to, 480 n., 589; entry of, by plaintiff, 461.

attachment for want of, 458, 462, 464, 465, 467, 468, 471, 472.

(See ATTACHMENT.)

Attorney-General, of, process to compel not issued, 472.

conditional, 458, 512, 536; entry of, how effected, 458 n., 587.

discharge of, 537.

order for, how obtained, and form of, 453 n., 587.

corporation, of, proceedings in default of, 477, 478.

costs of, where entered by plaintiff for defendant, 478, 541.

cross-suit, in, staying proceedings till entry of, 1551.

decree, entry of, after, 153, 540.

presumed after, 517 n., 536 n.

defence, entry of, first step in, 533.

definition of, 586.

dismissal of bill, on plaintiff's application before, 790; or after, 790, 791.

distringas, to compel, 477.

(See DISTRINGAS.)

entry of, generally, 536-538; dispensed with, when, 586.

entry of, by defendant, 536-538.

[The references are to the star pages.]

APPEARANCE — *continued.*

- after appearance for him by plaintiff, 479, 540 ; effect of, 479, 541.
- dispensed with, when, 536.
- fee on, 587 n.
- irregularity in process waived by, 512, 536.
- jurisdiction, where defendant served out of the, 453.
- mistake in, correction of, 540.
- necessary, before he can defend suit, 479, 536, 541.
- although already entered for him by plaintiff, 479, 541.
- notice of entry of, service of, 537.
- time for, 441, 537 ; jurisdiction, when service made out of, 441, 454.
- entry of, by plaintiff for defendant in default, 460, 462, 472, 478, 540.
- absconding defendant, for, 456, 457, 458 and in notes.
- order for, how obtained, and necessary evidence, 458—460.
- amended bill, to, 461.
- corporation aggregate, for, 477.
- costs of, 478, 541.
- Crown, for officer of the, 462.
- entry, how effected, 462.
- fee payable on entry of, 462 n.
- infant defendant, for, irregular, 162 n., 460 and n., 476.
- jurisdiction, where defendant served within the, 460 ; time for, 460.
- leave to enter, how obtained, and necessary evidence, 461, 462.
- jurisdiction, where defendant served out of the, 460.
- leave to enter, how obtained, and necessary evidence, 461, 462.
- married woman, for, 476.
- mistake in, correction of, 462 n., 540.
- Notice of entry of, not necessary, 462.
- Parliament, for member of, 473.
- peerage, for defendant having privilege of the, 478.
- revive, to order to, 461.
- subsequent entry of appearance by defendant, effect of, 479, 541.
- substituted service on defendant after, 461.
- time for, where defendant served within the jurisdiction, 460.
- leave to enter after expiration of time, how obtained, 460, 461.
- unsound mind, for persons of, irregular, 177, 460 n., 476.
- formal defendant, of, 482, 538.
- common appearance, of, 432, 538, 539.
- costs occasioned by entry of, 482.
- gratis appearance of, 539 and n.
- leave to enter, when necessary, and how obtained, 432, 539.
- special appearance of, 432, 539.
- different forms of, 587 and n.
- time for, 432.
- gratis, what is, and entry of, 441 n., 539 and n.
- consequence of, 539.
- party must be named in bill, 539.
- when allowed at hearing, 539.
- hearing, at, when permitted, 153, 539, 980.
- jurisdiction, of defendant out of the effect of, 152.
- person not a party, of, consent of all parties necessary, 539, 980.
- party not duly served, by consent of plaintiff, 980.
- pro confesso*, when bill ordered to be taken, 527.
- husband and wife, of, how entered, 537.
- infant, of, how entered, 161 n., 162, 538 ; and proceedings in default of, 475, 476.
- injunction, when granted before, 1666, 1667.
- not usually granted *ex parte* after entry of, 1666.
- married woman, entry of, by, 537 ; proceedings in default of, 476.
- messenger not sent to compel, 469 n., 471.
- necessity for, how indicated, 446, 533, 538.
- non-resident, by, 536 n.
- notice of decree, entry of, by person served with, not required, 487, 538.
- officer of the court, of, proceedings in default of, 474.
- pauper, of, how entered, 538.
- persons of unsound or weak mind, of, how entered, 176, 538 ; proceedings in default of, 475, 476.
- petition of right, to, 132.
- privileged person, proceedings in default by, 472—474.
(See PRIVILEGED PERSON.)

[The references are to the star paging.]

APPEARANCE — continued.

pro confesso taking bill, for want of, under statute, 456, 457, 459, 518.
 proceedings in default of, where service of the bill cannot be effected, 456—460.
 where service of the bill has been effected, 460—478.
 process to compel, irregular, how discharged, 512, 537 n.
 receiver appointed before appearance, when, 1784.
 revivor, to order of, when required, 588; entry of, by plaintiff, 461.
 sequestration for want of, 473—478.

(See SEQUESTRATION.)

service of proceedings before expiration of time for appearance, 1596.
 special, 536 n., 842 n.
 supplemental order, to, when required, 538.
 supplemental statement, to, 538.
 time for entering, 536 and n., 587 n.
 formal defendant, in case of, 432.
 jurisdiction, where service out of the, 441, 452; how fixed, 452.
 time for, service of notice of motion, irregular before expiration of, 1596.
 unsound mind, of person of, how entered, 176, 588.
 proceedings in default, 475, 476.
 In United States courts, 536 n.
 in Massachusetts, 536 n.

APPOINTEES,

testamentary, of married woman, class suit on behalf of, 228, 238.
 necessary parties, when, 228.

APPOINTMENT OF GUARDIAN, 1346—1356. (See GUARDIAN.)

APPOINTMENT OF NEW TRUSTEES. (See TRUSTEES.)

APPORTIONMENT,

costs of, between different funds, 1432.
 between different parties, 1407, 1408.

(See Costs.)

income, of, on death of life tenant, order to provide for, 1607, 1803.
 deficient fund, proceedings for apportionment of, 1846.

APPROPRIATION,

effect of, on wife's right by survivorship, 115.
 fund, of, personal representative not necessary party after, 250.

ARBITRATION,

agreement to refer to, cannot be pleaded, 670 and n.
 but proceedings may be stayed, 670, 671, 1857.
 application to stay, when and how made, 1862.
 cannot oust proper courts of justice of their jurisdiction, 670 n.
 compulsory, bill of discovery in aid of, 1556, 1557.
 issue cannot be referred by judge to, 1115.
 specific performance of, not decreed, 670.
 statutory jurisdiction in cases of, 1857—1862.
 submission to, made rule of court, unless contrary intention appears, 1857, 1858;
 application, for, how made, and evidence, 1858.
 filing submission, 1858 and n.
 suit, question in, referred to, by consent, 1860.
 order for, how obtained, and subsequent proceedings, 1860, 1861.

(See AWARD.)

ARBITRATOR,

answer of, extent of, 297, 671.
 appointment of, under Common Law Procedure Act, 1854, 1859.
 authority and powers, 1859.
 costs, when ordered to pay, 298.
 party to suit to impeach award, when, 297, 322.
 plea by, extent of, 297, 621.

ARCHBISHOP,

record in registry, of provable as exhibit at hearing, 881, 882.

ARGUMENTS.

should not be pleaded, 545.

ARREARS,

annuity, of, interest on, at what rate allowed, 1255.

 parties to suit for, 262.

dower, of, account of, directed, 1166; interest not allowed on, 1166.

[The references are to the star paging.]

ARREARS — continued.

statute of limitations, when applicable to suit for, 652, 1166.
 interest of money charged on land, or of legacy, of, statute of limitations applicable to, 653, 654.
 life interest, of, not received by husband, widow entitled to, 104.
 rent, of, suit for, when barred by statute of limitations, 653.

ARREST,

attachment, under, what is sufficient, 468; doors may not be broken open, 467;
 remedy against property not lost by, 1042, 1065.
 illegal if before delivery of warrant, 466.
 invalid, after return day, 467.
 judgment debtor, of, right against property not lost by in equity, 1042, 1065.
ne exeat, not issued against person not liable to, 1699.
 nor after arrest at law, 1701; unless for another demand, 1701, 1702.
 privilege from, 1069 n. (a)
 protection from, of officers, suitors, and witnesses, 1069.
 sufficient, what is, 467.
 void if made on Sunday, 467.
 unless on Lord Chancellor's warrant, 467; or order for committal, 467; or a
 recapture, 467.

ART,

meaning of word, and terms of, judicially noticed, 546
 publication of works of, when restrained, 1647.

ARTICLES,

use of, 958.
 to discredit witness, form of, 957.
 course of proceeding upon, 958.
 nature of the examination permitted, 957-961 and notes.
 form of interrogatories upon, 961.

ASCERTAINED SUM,

parties to suit for aliquot portions of, 219.

ASSENT,

personal representative, where not necessary party after, 250.

ASSESSMENT OF DAMAGES. (See DAMAGES.)

ASSETS,

admission of, or affidavit as to, on application to restrain creditor's action after decree, 1617.
 admission of, effect of, 286.
 discovery barred by, 718.
 immediate decree made for payment in case of, 236.
 limitation of, by amendment of answer, when permitted, 779.
 admission of, what is not, 236.
 marshalling, parties to suits for, 237.
 receipt, by personal representative restrained, when, 1665.
 specific, persons possessing, when proper parties, 329.

ASSIGNEE,

husband, of, wife's equity to a settlement against, 104.
 lease, of, where lessee necessary party to suit by lessor against, 206.
 limitations, statute of, runs against, when, 648.
 mortgage, of, last only necessary party, 194.
 partners, of, suit by, 281 n.
 patent, of, rights of, 1648 n.
pendente lite, usually not a necessary party, 280 n., 281, 1517.
 leave to attend proceedings, when given to, 281 n.
 made party by supplemental proceedings, 281, 1517.
 pleading, 890 n., 405 n.
 trustee, of, necessary party, 247.

ASSIGNEES IN BANKRUPTCY,

bankrupt not a necessary party to suit by or against, 157, 224, 256, 296.
 costs of, 160, 710, 1382, 1421, 1428, 1482.

(See Costs.)

co-plaintiffs, need not all be, 224.
 defendants, death or change of, an abatement, 159; proceedings thereon, 159, 1512
 estate of bankrupt represented by, 255.
 evidence taken before bankruptcy, used against, when, 159.
 parties when necessary, 159, 215 n., 249.

[The references are to the star paging.]

ASSIGNEES IN BANKRUPTCY — *continued.*

how made parties, when bankruptcy *pendente lite*, 159, 1512.
plaintiff, death or change of, not an abatement, 65.
new assignee, how substituted, 65, 1512.
property of bankrupt vested in, 59, 60; although abroad, 61.
revivor of suit by, 63, 1512; compelling, 63, 813, 814.
sanction of Court of Bankruptcy required to suit by, 60, 311.
absence of sanction not a ground of demurrer, 301.
surplus, cannot be sued by bankrupt for, 60.

ASSIGNMENT,

bail bond, of, 469.
bill filed, after, dismissal of suit without costs on plaintiff's application, in consequence of defendant's assignment, 791.
copyright, of, proof of, 1641.
covenant against, forfeiture on breach of, not relieved against, 1659.
husband's, of wife's property, effect of, 119, 121, 123, 127.
(See MARRIED WOMAN; SURVIVORSHIP, MARRIED WOMAN'S RIGHTS BY.)
objection of, may be made at the hearing, 314 n.
statute of limitations, effect of, on, 648.

ASSIGNOR,

bond, of, or his representative, when a necessary party, 199.
chose in action, of, or his representatives, when necessary parties, 197 and n.
usually made co-plaintiffs, 200 and n.
equitable interest, of, generally not a necessary party, 206.
judgment of, when necessary party, 199.
pendente lite, effect of, 281, 1517; supplemental order on, 1517, 1525.
shares in unincorporated joint-stock company, of, when necessary party, 199.

ASSIGNOR AND ASSIGNEE,

costs, when allowed only one set in administration suit, 730, 1482.
may be joined as co-plaintiffs, 200.

ASSISTANCE (WRIT OF),

applicable, when, 1062 and n.
delivery of possession to purchaser, issued to enforce, 1062 n.
execution of 1063; fee on, 1063 n.
injunction to restrain action against sheriff's officer executing, 1063.
order for, how obtained, and evidence, 1062..
preparation and issue of, 1063.
receiver, to enforce delivery of possession by party to, 1742.
sequestrators, when issued, to put in possession, 1056.

ASSISTANT CLERK (AT JUDGES' CHAMBERS),

appointment of, 1826; and salary of, 1826 n.

ASSIZES (TRIAL OF QUESTIONS OF FACT AT). (See ISSUE.)

ATTACHED AND IMPRISONED,

return of, to attachment, 470.
answer, for want of, 490, 491; subsequent proceedings, 490 - 494.
costs of contempt, when defendant not duly brought up after, 472, 491.
appearance, for want of, 472; not followed by further process, 472.
costs, for non-payment of, proceedings on, 1454.
decree or order, for non-obedience to, 1046; subsequent proceedings, 1046 - 1050.

ATTACHMENT (WRIT OF),

generally, 463 - 478, 1043 n.
arrest under, proceedings after, 467, 468.
bailable, when, 468; when not, 469, 1046, 1454.
bail, how put in, 468.

(See BAIL. BAIL BOND.)

chambers, application for, in, 464 n.
costs of, 471; where time for return allowed to expire, 467.
decree, to enforce execution of 1043 n.
delivery of, to sheriff or under-sheriff, or deputy, 466.
diligence must be used to execute, 465.
direction of, 463; where contemnor in prison, 466, 472.
execution of, where contemnor in custody, 466.
where not in custody, 466, 467.
costs of contempt after, 507 n.
doors not to be broken open, 467, 468.
one writ only executed though several issued, 468.

GENERAL INDEX.

[The references are to the star paging.]

ATTACHMENT (WRIT OF) — continued.

fee on, issue of, 464 n.
filing, 1047 n.

form of, indorsement on, and number of names inserted in one writ, 464.
irregularity in, when it may be waived, 512.

jurisdiction, need not be issued against person out of, 465 n.

preparation and issue of, 464.

returnable, when to be made, 464.

return of, 468 - 472.

(See RETURN.)

compelling, mode of, 470; where issued into county palatine, 470.

form of, 471; where issued in county palatine of Lancaster, 471.

sheriff's name, must be made in, 469.

teste, of, 464.

time for making, 469.

true, must be, 469.

answer, for want of, 488 - 490.

absconding defendant, issue of, against, before expiration of time for answer, 489; evidence on which issued, 489.

contemnor may oppose, 506.

demurrer, filing of, after issue of attachment, irregular, 592.

discharge, defendant arrested under, and not brought up when entitled to, 490, 491.

evidence on which issued, 489 n.

execution of, 489.

husband, against, for want of joint answer of self and wife, 181.

indorsement, on, 489.

irregular, pending application for time, 742.

issued, how, 189; when before expiration of time to answer, 489.

jurisdiction, defendant out of the, not issued against, to take bill *pro confesso*, 466 n., 521.

married woman, against, order necessary for, 183, 498.

application for order, how made, 183, 498.

new, when issued against discharged defendant, 490.

notice before issuing, effect of, 489.

plea, filed after issue of, on payment of costs of contempt, 691.

plea overruled, issued after, 701.

printed copy of answer, for not leaving, 756 n.

returns to, 490.

revivor of suit, after, 1545.

time, order for, irregular, after issue of, 489.

appearance, for want of, 453, 462, 468, 465, 468, 471, 472.

bailable, 468.

discharge, defendant arrested under, when entitled to, 472.

indorsement on, 464.

issue of, 464, 465; necessary evidence, 465.

bill must be regularly filed, 465.

special order required for issue, 461.

jurisdiction, not issued against defendant served out of the, 452, 453.

married woman, when issued against, 476; against husband of, 476.

obsolete, under present practice, 472.

return of, and subsequent proceedings, 471.

attornment to receiver, to enforce, 1743.

costs, for non-payment of, 1453, 1454; not bailable, 469, 1454.

execution, return and subsequent proceedings, 1454.

fee on issue of, 1454 n.

indorsement on, 1453.

irregularity, discharge of for, 1454 n.

lien or set-off in respect of costs, not lost by issue of, 1455.

preparation and issue of, 1453.

decree or order, for non-obedience to, 1045, 1046.

bailable, not, 469, 1046; proceedings when bail improperly taken, 1047.

execution of, 1046.

filng when returned, 1047 n.

form of, indorsement on, and issue of, and evidence, 1046.

irregularity, when set aside for, 1047.

married woman, against, 113, 499.

return to, 1046, 1049.

bankruptcy of contemnor sufficient, when, 1047.

[The references are to the star paging.]

ATTACHMENT (WRIT OF) — *continued.*

documents, for not making sufficient affidavit as to, 1823.
 Irish Court of Chancery or Landed Estates Court, to enforce decree of, 1068.
 payment transfer or deposit in court, for non-obedience to order for, 1793.
 production of documents, for non-obedience to order for, 1839.
 purchaser may be compelled to complete by, 1281 n.
 return of commission to take answer, to enforce, 753.
 trustee, against, for non-payment of money or costs, 1458.
 witness, in case of default or contempt by, 909.

ATTAINER,

civil death, when, 53.
 commission of, Attorney-General not necessary party, after issue of, 136.
 disability arising from, in case of plaintiff, 45, 53; of defendant, 130, 156.
 effect of, generally, 53, 54, 55.
 on real and personal estate, if for felony, 54; if for treason, 54.
 on right to sue of person claiming under criminal, 55.
 origin of term, 53.
 plea of, of defendant's, 156, 631; of plaintiff's, 57, 630.
 reversal of, effect of, 57.

ATTainted PERSON,

defendant, when a, 156.
 plaintiff, cannot be, 53, 55.

ATTESTATION OF HONOR. (*See Honor, ATTESTATION OR PROTESTATION OF.*)

ATTESTATION OF WILL,
 need not be alleged, 366.

ATTESTING WITNESS,

execution, proof of, by, when unnecessary, 880.

ATTORNEY,

absence of, new trial at law on ground of, 1131.
 communications from or to, when privileged, 571-578.
 (*See Professional Confidence.*)
 communication to person consulted as an, but really not so, not privileged, 576.
 demurrer to bill by executrix of, to recover costs from client, 550, 551.
 name for trial of issue, order to, 1114.
 party, when made, 298, 299, 322; allegations of bill against, 208.
 not a necessary party because he has client's deeds in his possession, 299.
 substituted service on, of bill to restrain action, when allowed, 447, 448.

ATTORNEY (POWER OF),

payment out ordered to holder of, 1801.
 prospective sum, may be extended to, 1802.

ATTORNEY-GENERAL,

answer of, form of, 139.
 exceptions do not lie to, 139.
 oath put in without, 139, 735.
 proceedings in default of, 497.
 appearance of, no process to compel, 472.
 brief of, in charity case, costs of, 1440 n.
 consent of, to reference of suit to arbitration, when required, 1861.
 costs of, 11, 140.

(*See Costs.*)

Crown, sues by, 6-8; although Crown not immediately interested, 7.

on behalf of Crown's grantee or chose in action, 7.

Church, on behalf of Crown as head of the, 8.

parens patriae, on behalf of Crown as, 8, 9.

discovery, when given by, 134, 139, 140.

fiat of, to petition under Sir Samuel Romilly's Act, 1854, 1855.

formal defendant, not to be treated as, 481.

idiot or lunatic, suit by, on behalf of, 9, 14.

illegitimate person, does not represent estate of, 202.

indorsement not necessary on copy of bill served on, 441.

informations by, 5-16.

interrogatories for examination of, when filed, 189.

nuisance, information, when filed by in case of, 1636.

party to suit, when made, 7, 8, 130, 138-139.

(*See Parties.*)

attainted or convicted person, to suit affecting property of, 136, 156.

boundaries of colonies, suits relating to, 136.

[The references are to the star paging.]

ATTORNEY-GENERAL — continued.

- United States Attorney-General, intervention of, in case of boundary between two States, 135 n.
- charities, to suits relating to, 136-139.
- Crown accountant, to suit by, against audit commissioners, 133, 134.
- Crown incidentally interested to suit, when, 130, 135.
- distinct Crown grants, to suits by parties claiming under, 136.
- grantee, Crown's, of chose in action, to suit by, 7, 136.
- parens patriæ*, to suit in which Crown interested as, 137.
- where title in Crown appears on the record, though no claim made, 136.
- will, to suit to establish, where heir cannot be found, 232, 233.
- pro confesso*, taking bill against, 497, 523.
- recognizance for costs not required from, on appeals to House of Lords, 1494, 1495.
- Romilly's (Sir S.) Act, attendance of, on proceedings under, 1856.
- signature of, required to information, 311 n., 899 ; how obtained, 399.
- to amended information, 311 n., 422.
- suits by, 5-16.

(See INFORMATION. INFORMATION AND BILL.)

- suits against, 130-140.
- Solicitor-General, when party to information by, 140.
- vacancy of, during, Solicitor-General sues on behalf of Crown, 140.

ATTORNMENT,

- receiver to, 1740-1743.
- direction for, when inserted in order, 1787.
- enforced, how, 1742, 1743.
- legal estate, effect on, 1748.
- sequestrators to, 1054, 1055 ; how compelled, 1055, 1056.

AUCTION (SALE BY),

- proceedings upon, 1268 *et seq.*
- purchasers of different lots should not join in same bill, 344.

AUCTIONEER,

- bidding at sale, 1271, n. (a).
- party, when made, 195, 196, 297 ; when not, 298.
- payment by, into court of balance of deposit, when ordered, 1771.
- remuneration of, on sale under decree, 1268.
- sale under decree, by, how conducted, 1271, 1272.
- specific performance, not a necessary party to suit for, 297.
- trustee, acting as, costs of, 1414.

AUTHOR,

- breach of contract by, when restrained, 1654.

AUTHORITY,

- bill, to file, must be special, 306, 307 ; and from all the plaintiffs, 307.
- written, not usually necessary, 306.
- bill filed without, proceedings in case of, 307.
- costs, 307-309.
- delay, application should be made without, 308.
- evidence in support, and notice of application, 308.
- proceedings where fact discovered after decision, 309.
- defend suit, what sufficient to solicitor, 533.
- new next friend, to use name of, 77.
- next friend, to use name of, must be filed with bill, 69, 86 n., 110.
- relator, to use name of, must be filed with information, 13.

AUTRE DROIT,

- documents held in, production of, at trial of issue, 1118.
- persons suing or defending in, not admitted *in forma pauperis*, 38, 155.

AVERTMENT,

- contrary to fact, of which court has judicial knowledge, not noticed, 18, 19.
- plea, in office of, 611-613.
- affirmative, what is, 613, 654.
- negative, what is, and when used, 614, 655.

AWARD,

- arbitration acts, under, proceedings on, not restrained, 1621.
- arbitrator, when party to bill to impeach, 297.
- certainty required in allegations of bills to set aside, 371.
- execution of, how enforced, where submission made rule of court, 1859.
- where it directs delivery of possession, 1860.
- plea of, in suit to impeach, for fraud, 298, 605, 670.

[The references are to the star paging.]

AWARD—continued.

- answer in support of averments, in 298, 605, 671.
- where dispute referred after bill filed, 670.
- remission of, under Common Law Procedure Act, 1854, 1860, 1861.
- rule of court, making, when in a suit, 1860, 1861.
- setting aside, when, on submission made rule of court, 1858.
- application, where, when, and how made, 1858, 1859.
- special case, statement of award as, under Common Law Procedure Act, 1854, 1859.
- statutory award, demurrer to bill to set aside, 553.
- suit referred to arbitration, proceedings on, 1861.
- time for making enlargement of, under Common Law Procedure Act, 1854, 1860.
- wife's right by survivorship, effect of, on, 118.

(See ARBITRATION.)

BAD HEALTH,

- defendant unable to answer in consequence of, allowed more time, 178.

BAIL,

- attachment, when bail may be put in to, 468; when not, 469, 1046, 1454.
- proceedings where taken on attachment for want of answer, 489–494.
- put in, how, 468; sheriff not obliged to take, 469.

BAIL-BOND,

- action on, not precluded by sending messenger, 469.
- assignment of, 469; and form of, 468, 469.

BAILIFF (SHERIFF'S),

- execution of warrant by, how effected, 466, 467.
- may be out of hundred, but not out of county, 467.
- warrant to, to execute writ, 466; form of, 466; and return thereof, 467.

BALANCE,

- account of, offer to pay not necessary, 385.
- interest on, when decreed, though not prayed, 382.
- when ordered on further consideration, 1368, 1369.
- stated account, of, interest on, when allowed, 1257, 1258.

BANISHMENT,

- civil death, when, 87.
- husband, of, wife may sue, 87; be sued alone, 178.

BANK OF ENGLAND,

- certificate of stock, when bound to give, 147.
- costs of, when thrown on particular legacy, 1432.
- distringas, against, to restrain transfer, 1691–1693.

(See DISTRINGAS.)

- interpleader suit by, where title to stock disputed, 147.

relation to the court, as custodian of the suitor's property, 1782, 1783.

stock, not bound by specific bequest or trust of stock, 147, 148.

transfer of stock, not a necessary party to suit, to authorize or restrain, 147, 1688;

may be a party, if discovery sought, 147 n.

BANKER,

- failure of, receiver when charged with loss occasioned by, 1751.

BANKRUPT,

- abroad, bankrupt cannot sue for property abroad, 61.
- account, bankrupt cannot sue assignees for an, 61.
- agreement not make a man, breach of, when restrained, 1655.
- answer of, not read against assignee, 157.
- assignees, bankrupt cannot sue for property vested in, 59.
- costs against, 64 n.
- costs, one set of, when allowed between bankrupt and his assignees, 730, 1432.
- creditors of, cannot sue for property vested in trustee, 59.
- creditors of deceased cannot sue trustee for an account, 323.
- demurrer that plaintiff is, 62, 158.
- that he is made co-defendant with assignees, 157.
- whether he may demur to bill praying discovery, 157.
- discharged, may sue for after-acquired property, 62.
- discovery, when he may file bill of, 58, 59.
- dismissal of bill for non-prosecution, on motion of, 159, 808, 814.
- equity, when he may sue in, 58–61.
- estate of, represented by assignees, 255.
- executor, costs of bankrupt, 1411 n.

[The references are to the star paging.]

BANKRUPT — continued

foreclosure suit, not necessary party to, 215, 255.
 injury or nuisance, when he may file bill to restrain, 58.
 law, when he may sue at, 58, 59.
 mortgagor, not necessary party to foreclosure suit, 215.
 party, not made a, to bill for relief, unless fraud or collusion charged, 158, 255, 286.
 may be to bill of discovery, 157.
 pauper, when allowed to sue as, 89.
 personal disability, under no, 58.
 plea that defendant is, 158, 631, 658; that co-defendant is, 157, 631.
 that plaintiff is, 62, 606, 630.
 property of, vested in assignee, 61; although abroad, 61; bankrupt cannot, in general, sue for, 60, 61, 157 n.
 redemption of mortgage by, when allowed, 60.
 suits against, 157-160; by, 58-68.
 surplus, cannot sue assignee for, 60.
 trustee, costs of, 1411 n.

BANKRUPT AND ASSIGNEES,

one set of costs, when allowed between, 780, 1432.

BANKRUPTCY,

act of, how proved, and how disputed, 65, 834.
 adjudication in, how proved, and how disputed, 65, 834.
 revivor upon, 1525.
 contemnor, of, when sufficient return to attachment, 1047.
 co-plaintiff, of, dismissal for want of prosecution after, 814.
 motion for revivor or dismissal on, 814.
 creditor's suit, in, who entitled to revive, 1540.
 defendant, of, *pendente lite*, not an abatement, 158.
 assignees, how brought before the court, 158, 159.
 dismissal of bill for non-prosecution in case of, 158, 159, 808, 814, 815.
 service of proceedings on, after, not necessary, 159 n., 969.
 demurrer on ground of plaintiff's, 62.
 difference between, and cases of voluntary alienation, 159 n.
 discharge abroad, 631 n.
 dividends in, treated as payments on account, 1226.
 husband, of, effect of, on wife's right by survivorship, 125.
 effect of, on promissory note given by wife *dum sola*, 116 n.
 settlement of wife's fund, in case of, 102.
 limitations, statute of, effect of, in case of, 848.
 next friend of married woman, of, proceedings upon, 112.
 obligor in bond to secure costs, of, effect of, 84.
 plaintiff, pending suit, an abatement, 63, 1542.
 dismissal of bill for non-prosecution, when not ordered, 64.
 judgment given, notwithstanding, 64.
 motion for revivor or dismissal of bill on, 63, 813.
 or after decree for prosecution of suit or stay of proceedings, 814.
 supplemental order on, 68.
 plea of co-defendant's, 157; of defendant's 158, 606, 631.
 of plaintiff's, 62, 606, 630.
 proof in, by husband, of debt due to wife, effect of, 118.
 receiver of, discharge of, on, 1765.
 surety for receiver of, proceedings on, 1766.

BANKRUPTCY (COURT OF),

injunction against proceedings in, when granted, 1626.
 jurisdiction of, 60.
 demurrer that it is the proper tribunal, 553.
 sanction of, to institution of suit, when to be obtained, 63, 811.
 want of, not a subject of demurrer, 311.

BAR,

disclaimer at, by counsel, in suit, 706 n.; on petition, 706 n.
 pleas in, 626, 627, 638, 679, 680.

(See PLEA.)

trial of at issue, 1112; and new trial of 1112.

BAR OF THE COURT,

answer, defendant in contempt for want of, how brought to, and subsequent proceedings, 491-495, 501, 502.
 attached and imprisoned, on return of, 491-494.
cepi corpus, on return of, 490, 491.

[The references are to the star paging.]

BAR OF THE COURT — continued.

- imprisoned, on return of, by messenger, 490; by sergeant-at-arms, 494.
- non est inventus*, on return of, by messenger, 490; by sheriff, 494-496.
- poverty, proceedings where defendant makes oath of, 500.
- costs on bringing contemnor to, 508.
- costs, contemnor for non-payment of, how brought to, 1454.
- decree or order, contemnor for non-obedience to, how brought to, 1048, 1049.
- imprisoned on sergeant-at-arms' return of, 1049.
- non est inventus*, on sheriff's return of, 1049, 1050.
- disclaimer at, by counsel, in suit, 706 n.
- on petition, 706 n.
- prisoner for misdemeanor, how brought to, on messenger's return, 490, 493.
- on sergeant-at-arms' return, 494; on sheriff's return, 494.
- time for bringing defendant arrested for want of answer to, after return attached and imprisoned, 490, 491.
- cepi corpus*, after return of, 490.
- messenger sent, when, 490.
- sergeant-at-arms sent, when, 494.
- vacations reckoned in, 491 n.
- vacation, contemnor how brought to, during, 491.

BARE TRUSTEE,

- in general, not a necessary party, 247.

BARGAIN AND SALE,

- enrolment of, averment of, not necessary, 365.

BARRISTER,

- receiver may be, 1783.

BASTARD. (See ILLEGITIMACY. ILLEGITIMATE PERSON.)

BELIEF,

- in answer, equivalent to admission from, 840.
- evidence as to, when admitted on motions, 1599.

BELIEF OR OTHERWISE,

- sufficient answer as to facts not within defendant's own knowledge, 723.

BELL,

- breach of covenant not to ring, when restrained, 1653.
- ringing of, when restrained, 1635 n.

BENEFICE,

- presentation to, when restrained, 1652.

BENEFICED CLERK,

- sequestration against, for non-obedience to decree or order, 1051.

BIDDING PAPER,

- on sale by court, form and filling up of, 1271.

BIDDINGS (OPENING), 1285-1292.

- advance of price, what necessary, 1286-1288.

- application for, how made, 1287; by whom, 1288; and when, 1288.

- collieries, in case of, 1288.

- costs on, 1287, 1288, 1291, 1292.

- default of applicant, proceedings on, 1291.

- deposit, amount of, on, 1289.

- repayment to former purchaser of his, 1291.

- return of, 1299.

- discharge of first purchaser on, 1288.

- effect of, 1288.

- former practice of, abolished, 1285 n.

- fraud in case of, 1290.

- lots, in case of sale in, 1287.

- number of times it may be ordered, 1288.

- order for, form of, 1291.

- private contract, sale by, 1292.

- purchaser, intending, not opened for mere benefit of, 1290, 1291.

- resale on, how conducted, and subsequent proceedings, 1292.

- second time when directed at instance of same party, 1288, 1292.

- separate applications for, as to separate purchases, 1287, 1288.

- proper time for opening biddings, 1288.

- before confirmation of report, 1288.

- after confirmation, special case for opening, must be made out 1289 and n.

- in New Jersey special grounds for opening biddings must always be made out, 1289 n.

[The references are to the star paging.]

BIDDINGS (OPENING) — *continued.*

practice as to, in New Jersey, 1289 n.

never opened for mere inadequacy of price, 1289 n., 1290 n.
fraud, surprise or mistake in sale, grounds for open biddings after report confirmed,
1290 and notes.

at the expense of the applicant, by motion, 1291.

when original bill necessary, 1291 n.

party opening biddings discharged, if outbid at resale, 1292.

BILL,

different sorts of, 305, 306.

English, 2.

what are original, 305.

not original, 305.

authority to file, 306, 307 n.

need not be in writing, 306.

but must be special, 307.

from all the plaintiffs, 307 and n.

filng of, commences suit, 2 n.

practice when filed without authority, 307.

obtaining previous sanction to file, 309-311.

where assets in course of administration, 310.

where receiver appointed, 310.

in case of infants, 310.

or lunatics, 311.

omission to obtain sanction cannot be taken advantage of by defendant, 311.

by whom prepared, 311.

signature of counsel, 311 n., 312 and n., 313 n.

forgery of counsel's name, 312.

unnecessary to sign original draft again after amendment, 313.

when amended by another counsel must have second signature either to draft or en-
grossment, 313.

order of court as to signature, 313.

objection for want of, 312 and notes.

signature of counsel not necessary where plaintiff manages his case in person, 311 n.

signing on back of, sufficient, 311 n.

signature of counsel by another person not enough, 312 n.

counsel should have information of contents of bill before he signs, 312
n., 313.

what affirmed by signature of counsel, 311 n.

where corporation is plaintiff, 311 n.

should be signed by officer making the oath, 311 n.

need not be under corporate seal, 311 n.

general nature of, and what it must contain, 313.

must state case within jurisdiction of court, 314 n.

consistent with itself, 313 n.

which will not preclude relief, 314 n.

presumption against pleader, 549 n.

must show plaintiff's right, by whom and how injured, in what he wants assis-
tance of court, and prayer for relief, 314.

must show plaintiff's interest in subject-matter, 314.

rule applies to all the plaintiffs, 315.

interest must be existing, 316.

interests must not conflict, 313 n.

general allegations insufficient, 324 n., 369 n., 545 n., 1663 n. (a)

must show interest not capable of being defeated, 317.

proper title, 317.

plaintiff's executor must state will duly proved, 318.

sufficient to allege will proved in proper court, without stating the court, 318.

if bill alleges the will proved, sufficient to avoid demurrer that it be proved
before hearing, 318.

same as to administration, 818.

but defendant may take advantage of fact not being as stated, by plea, 319.

bill against executor need not allege will proved, 319.

where probate, or letters of administration, bear an inapplicable stamp, 319.

must allege all acts preliminary to plaintiff's title, 319.

of showing a derivative title, 320.

plaintiff formerly must show how he was heir, 320.

as to setting out pedigree, 320.

where plaintiff claims by privity of contract, 320.

[The references are to the star paging.]

BILL — continued.

- in suits between mortgagor and mortgagee, lessor and lessee, principal and agent, 320.
- where claim depends only on title it must be stated, 321.
- of stating case against defendant, 321.
 - certainty in 313 n., 321, 324 n., 360 n.
 - plaintiff must show that the defendant has interest, 321.
 - or is in some way liable to plaintiff's demand, 321.
 - exception in cases of members or officers of corporations, 322.
 - as to cases of attorneys or agents, &c., 322.
 - must show privity between plaintiff and defendant, 322.
 - legatee or creditor cannot sue debtor to testator's estate, 323.
 - except in cases of collision, &c., 323, 324.
 - or a special case be made out, 323 n.
 - by creditor against debtor of insolvent estate, 323 n.
 - against surviving partner of a deceased debtor, 324.
 - by joint creditor against representatives of deceased partner, 324.
 - by residuary legatees against executor and surviving partners of testator, 324.
 - how collision to be charged, when necessary to be alleged, 324 and n.
 - general charge of fraud is insufficient, 324.
 - employment of agents does not destroy privity between plaintiff and defendant, 325.
 - must pray proper relief, 325 and n.
 - what mode of praying relief determines, 325 n.
 - statutory provision as to prayer, 326.
 - every thing to be proved must be stated, 326 and n., 327.
 - but not matters of which court bound to take judicial notice, 326 n.
 - no facts in issue unless charged in bill, 326 n.
 - no relief granted for matters not charged, 326 n.
 - inquiry not directed unless ground laid for it in the pleadings, 327, 328.
 - where bill sets up case of actual fraud, 328 and n.
 - must be for adequate value, 243 n., 328.
 - reason of this rule, 328 n.
 - antiquity of it, 328 n.
 - refers to claim stated, 328 n.
 - applies to bills for *relief*, not to those for *discovery*, 328 n.
 - how inadequacy of value taken advantage of, 329 and n.
 - must be for whole matter, 328.
 - not for one of several claims against same defendant, 330.
 - in respect of one of two mortgages, 330.
 - mortgage and bond, 330.
 - limitation of rule to cases where matter capable of immediate decision, 331.
 - whether bill for partnership account must seek dissolution, 332 and notes, 333.
 - must not be multifarious, 333-346.
 - definition of multifariousness, 334 and notes.
 - no positive and inflexible rule as to, 334 and notes.
 - each case governed by its circumstances, 334 and notes, 338 n.
 - to render bill multifarious it must contain several distinct grounds of suit in equity, 334 and notes, 338 n.
 - is multifarious if it mixes claims by one in his own right with others made by him as administrator, 334 and notes.
 - distinction between multifariousness and misjoinder, 335, 339, 340.
 - trustees for sale against several purchasers, 335.
 - to rescind leases to different persons, 335.
 - trustees to set aside sales to different persons, 336.
 - cases of exception, 336.
 - joinder of two estates in one suit, 336 and n.
 - where objection for multifariousness will not be allowed, 336, 337.
 - not multifarious where one general right is claimed by plaintiff, though defendants have separate and distinct rights, 337, 388, 339 and n., 341, 345.
 - as right to fishery, 341.
 - to a duty, 341.
 - is multifarious where brought against several defendants, for redress in regard to separate transactions, at different times, &c., 341 n.
 - where demands against different estates, though defendant is executor of all, 341 n.
 - for specific performance, praying relief against other persons claiming an interest in the estate, 336.
 - by mortgagee against mortgagor and adverse claimant, 339 n.
 - should not include in one suit separate infringements of same patent by different persons, 339.

[The references are to the star paging.]

BILL—*continued.*

- nor separate infringements of same copyright, 339.
- nor joint and separate demands, 339.
- is multifarious which seeks to redeem mortgage of entire estate, and a subsequent mortgage by one tenant in common of his share in a part, 342 n.
- may not be filed against corporation for distinct charities, 343.
 - unless they are homogeneous, 343.
- may seek redemption of two distinct mortgages of different parcels of real estate, 342 n.
 - or specific performance of distinct contracts relating to different parcels of real estate, 342 n.
- for settlement of partnership may embrace every object necessary to a complete adjustment, 342 n.
- by several co-plaintiffs, claiming distinct matters against same defendants, 344.
- by purchasers of different lots at auction, 344.
- by heir and next of kin for real and personal estate, 344, 345.
- not multifarious, against all purchasers of an administrator who has sold several lots collusively at the same sale, 344 n.
 - against several holders of notes sought to be delivered up, 344 n.
 - where multifarious relief not prayed, 344 n., 346 n.
- multifariousness objected to by demurrer or answer, 346 and n.
 - but not at the hearing, 346.
 - except by court, 346 and n.
- how objection of multifariousness waived or obviated, 346 notes.
- scandal and impertinence, 347–355.
 - definition of scandal, 347.
 - nothing material scandalous, 347.
 - in bill to remove trustees, not scandal to impute corrupt motives, 348.
 - or to allege vindictive motives, 348.
 - definition of impertinence, 349 and notes.
 - test of it, 349 n.
 - rule as to scandal and impertinence in United States courts, 349 notes.
 - neither scandal or impertinence ground for demurrer, 349.
 - present practice in England as to impertinence, 350–354.
 - objection for scandal in bill by person not party to the cause, 351.
 - present English practice as to scandal, 351–354.
 - exceptions for scandal, 351.
 - within what time to be set down, 352.
 - how exceptions for scandal are to be set down, 353.
 - exceptions for scandal may be taken at any stage of the suit, 354.
 - how scandalous matter expunged, 354.
 - when to be expunged, 354.
 - costs occasioned by scandalous matter, 355.
 - action allowed by court where no reference for impertinence, 351.
 - form of original bill,—formerly in nine parts, 355.
 - now in four parts, 356.
 - address of, in England and United States, 355, 357 and n.
 - forms of address, 1878.
 - names and addresses of the plaintiffs, 357.
 - must be correctly stated, 357.
 - place of abode must be correctly stated, 358 and in n.
 - if omitted defendant may demur, 358.
 - misstated defendant may plead, 358.
 - modern practice to move security for costs, 358.
 - amount of security, 359.
 - executor or administrator need not so describe himself, 359.
 - nor person suing by next friend, 359.
 - nor peers or corporate bodies, 359, see 358 in n.
 - bill by one in behalf of himself and others, 360.
 - in United States courts, introductory part of bill must contain names, abode, and citizenship of all the parties, plaintiffs, and defendants, 357 n.
 - in New Hampshire, the introductory part shall contain names, abode, and description of plaintiffs and defendants, 357 n.
 - stating part, 360.
 - must show plaintiff's equity, 360, 361 and n.
 - must be full and accurate, 361 n.
 - clear and precise, 361 n., 368.
 - every thing essential, alleged positively, 360.
 - defect in this cannot be supplied by inference, 361 n.

[The references are to the star paging.]

BILL — continued.

- if facts stated in bill are disproved or are defectively stated, whether relief may be granted on facts in answer, 361 n.
- as to facts concerning which discovery is sought, 360.
- certainty required where bill by partner alleges that defendant copartner has books and papers, 360 n.
- enough must be averred to found decree, 361.
- technical expressions, how far necessary, 362.
- manner of stating deeds, 368.
- documents set out in *hec verba*, where question of construction turning on particular words, 363, 367.
 - as in wills or informal instruments, 363, 365, 368.
- when conveyance valid without deed or writing, they need not be averred, 364, 365, 367.
- otherwise where a deed or writing is necessary, 365, 367.
- statutory regulations respecting an agreement do not alter pleadings, 365, 366.
- bargain and sale, 365 and n.
- when writing required by statute of frauds, 365, 366.
- part performance, 365 and n.
- trust deed, 365 and n.
- stamp, 365.
- letters containing agreement stated as constituting it, or as evidence, 365.
- where things lie in grant, 367.
- general rule of modern pleading, 367.
- reference to instruments, 367.
 - makes them part of record, but not evidence, 367.
- caption, 367 n.
- certainty required, 368 and n., 370.
 - in alleging time, 369.
 - in bills to correct errors, 371.
 - to open settled account, 371.
 - stated account set up by defendant, 371.
 - when award to be impeached, 371.
- objection for want of certainty taken by demurrer, 371.
- charge of confederacy, 372.
 - where may or must be omitted, 372 n.
- charging part, 372, 373 and notes
 - origin and purpose of, 372, 373.
 - whether and where may be omitted, 373 and n.
 - charge of confessions, conversations, &c., 373 n.
- averment of jurisdiction, 374 and n.
 - never absolutely necessary, and now obsolete in England, 356, 374.
 - may be omitted, where in United States, 374 n.
 - in United States courts the bill should show citizenship, when jurisdiction founded on it, 357 in n.
- interrogating part, 374 and n.
 - in English practice bill not to contain any interrogatories for the examination of defendant, 374.
 - how far held necessary and when may be omitted in United States, 374 n.
 - interrogatories, in English practice, may be filed, if plaintiff requires answer from any defendant, 374.
 - English rules concerning, and form of, 375-377.
- former English practice, and rules of the United States courts concerning interrogatories, 376 n., 377 and in note.
- Massachusetts and New Hampshire practice, 377 n.
 - general interrogatory, 374 n., 377 n.
 - interrogations must be confined to charge or allegation, 377 and n.
- prayer for relief, 377.
 - for specific relief, 377.
 - general relief, 377.
 - why latter not safely omitted, 377 n.
- special prayer when injunction wanted, 377 n.
- special prayer not generally necessary, why, 378 n.
 - when deficiency supplied under general prayer, 377 n., 378 and n.
 - rules as to relief under general, and under special prayer, 377 n., 378 and n.
 - no decree of foreclosure under prayer for sale, 379 and n.
 - no decree for land under prayer for annuity, 380.
 - account of rents and profits, and for mismanagement, not directed under prayer for specific performance by vendor, 380, 381.

GENERAL INDEX.

[The references are to the star paging.]

BILL — *continued.*

- specific performance not decreed of a written agreement stated in bill, where parol variation proved, 380.
- but defendant may have decree on agreement as proved, without cross-bill, 380 n.
- compensation for improvements not allowed under general prayer for specific performance of agreement not proved, 381 n., 385.
- on bill to rescind, specific performance not decreed, 381 n.
- relief under general prayer, when facts which entitle to it are put in issue, 380.
- facts must be in issue to show claim to relief under general prayer, 380.
- in cases where fraud is charged, 382.
- fraudulent release ordered to be delivered up, on prayer for general account, 381.
- interest on balance not decreed under general relief, 382.
- leave to amend prayer, when granted, 383.
- when not, 383 and n., 384.
- latitude in cases of infants and charities, 384.
- of alternative prayer, bills with a *double aspect*, 384 and n., 385 and n.
- prayer for general relief not always sufficient, as in some cases of fraud, 384 n.
- must offer to do equity, 385.
- when this offer entitles defendant to decree without cross-bill, 385.
- offer to pay balance of account, 385.
- on bill to redeem, 386.
- on bills to set aside securities, &c., 386.
- plaintiff must offer to pay what is due, 386.
- gratuitous offer by bill cannot be withdrawn, 387.
- waiver of penalties and forfeitures, 386, 387.
- where no direct relief sought against a party, 387.
- prayer for provisional orders, 388, 389.
- as for injunction or *ne exeat regno*, 388, 389.
- must be intituled between the parties, 389.
- names of defendants repeated at end of, 389.
- name and address of plaintiff's solicitor, and agent, &c., appended in note, 389 and n.
- branch of the court, 389.
- prayer for process, 389 and n.
- not now required in England, 389 n.
- nor in New Hampshire, unless special, 389 n.
- subpoena, 389; form of, 389, 390.
- naming one in bill, does not make him party, without prayer for process, 390 n.
- rules of United States courts as to prayer for process, — injunction or writ of *ne exeat regno*, 391 n.
- in case of corporations, 391 n.
- in what cases bill accompanied by affidavit, 392–396.
- where no preliminary order required, bill not generally to be sworn to, 392 n.
- in some states oath to bill required, in others not, 392 n.
- oath to bill required in suits to obtain benefit of lost instruments, 392.
- so where the suit is for discovery of deeds, &c., and for relief, 396.
- but not where for discovery only, 392, 398.
- oath unnecessary, where suit for discovery and re-execution of cancelled instrument, 393.
- oath required in suits to limit responsibility of ship-owners under 53 Geo. III., c. 159, 393.
- so in suits to perpetuate testimony of witnesses, 394.
- so in bills of interpleader, 394 and n.
- so bill praying for injunction, 394 n.
- or for *ne exeat regno*, 394 n.
- affidavit, to bill by corporation, 394 n., 396.
- when bill sworn to for the purpose of calling for answer on oath, 394 n.
- to a bill *quia timet*, 394 n.
- all plaintiffs should join in affidavit, 396.
- omission of affidavit, how advantage taken of, 395.
- bill must be printed, 396.
- in what cases written bill may be filed temporarily, 396.
- written taken from file, if printed not duly filed, 396.
- written and printed must agree, 397.
- address, &c., to be written or printed on bill, 397.
- and bill must be marked for one of the judges, 397.
- of filing and printing bill, 396.
- how filed, 396, 397, 398; and where, 398.
- when to be filed and duty of clerk, 396, 398, 399 and n.

[The references are to the star page.]

BILL — *continued.*

- transfer of causes, how effected, 1, 388.
- copies, defendant entitled to, 899.
- registry of, as *lis pendens*, 400.
- how registered, 400.
- re-registry, 400.
- entry of satisfaction on registry, 400, 401.
- amending bills, 401—427.
- amendment must not be inconsistent with original bill, 408 n.
- (See AMENDED BILL. AMENDMENT OF BILL.)
- where defendant may read plaintiff's bill at law, 838.
- when bill may be read as admission, 838.
- when bill in another suit may be read, 839.
- bill by imbecile person taken from file, 86.
- irregularity in amending bill, cause of demurrer, 582.

BILL (AMENDED). (See AMENDED BILL.)

BILL FOR WRIT OF CERTIORARI. (See CERTIORARI, BILL FOR WRIT OF.)

BILL (CROSS). (See CROSS-BILL.)

BILL OF DISCOVERY. (See DISCOVERY, BILL OF.)

BILL TO CARRY DECREE INTO EXECUTION. (See EXECUTION, BILL TO CARRY DECREE INTO.)

BILL TO IMPEACH DECREE FOR FRAUD. (See FRAUD, BILL TO IMPEACH DECREE FOR.)

BILL OF INTERPLEADER. (See INTERPLEADER.)

BILL (ORIGINAL),

- consent decree obtained by fraud, impeached by, 974, 1584, 1585.
- decree obtained by fraud, collusion, or error, when impeached on, 164, 173 and n., 582, 974, 1584, 1585.
- definition of, 305, 306.

separate account, error in carriage to, corrected by, 1798.

BILL (IN THE NATURE OF AN ORIGINAL BILL),

definition of, 305.

BILL (NOT ORIGINAL),

definition of, 305.

BILL OF PEACE. (See PEACE, BILL OF.)

BILL TO PERPETUATE TESTIMONY. (See PERPETUATE TESTIMONY, SUIT TO.)

BILL OF REVIEW. (See REVIEW, BILL OF.)

BILL (SUPPLEMENTAL). (See SUPPLEMENTAL BILL.)

BILL AND ANSWER,

- answer admitted to be true at the hearing on, 829.
- cause heard on, when, 828, 829.
- costs on dismissal at hearing on, 982.
- dismissal of bill on non-appearance of plaintiff at hearing, 979.
- evidence in such case, 829, 881.
- exhibits may be proved at hearing on, 829, 881.
- hearing on, proceedings at, 982.
- replication, permitted after hearing on, when, 982.
- setting down for hearing on, 964.
- withdrawal of replication to set down cause, on, 834.

BILL OF EXCHANGE. (See EXCHANGE, BILL OF.)

BIRTH,

- child, of, supplemental order on, 1527 and n.
- intermediate estate, of, person entitled to, supplemental bill on, 229, 285.
- place of, when discovery as to, must be given, 584, 585.

BISHOP,

- lunatic incumbent, when bishop necessary party to suits by, 208.
- record from registry of, provable as exhibit at hearing, 881.
- sequestrator, when bishop necessary party in suit against, 208.
- tithes, bishop not necessary party to suit by incumbent for, 208.
- waste by, how restrained, 8.

BLIND PERSON,

- affidavit of, how taken, 897; jurat on, 897.
- answer of, how taken, 746; jurat on, 746.

[The references are to the star paging.]

BODLEIAN LIBRARY,

record from, provable as, exhibit at hearing, 881.

BOND,

assignor of, or his representative, when a necessary party, 199.
exhibit provable at hearing, 881.

interest, what allowed on, 1254; if security for annuity, 1254.

married woman, belonging to, release of, by husband, effect of, 123.

master, by, 1279 n. (a).

obligee of, or his representative, when necessary party, 199.

proves itself if thirty years old, 878.

security for costs given by, 33-36.

(See Costs, SECURITY FOR.)

BOOK (TITLE OF),

infringement of right to, restrained, 1648.

BOROUGH ENGLISH,

descent in, judicially noticed, 546.

BOUNDARIES,

colonial, bill to settle, 20; Attorney-General necessary party to, 185, 136.
commission to settle, 1163, 1164.

conveyances, mutual, not directed by decree in suit to settle, 1164.

costs of suit to settle, 1165.

decree for commission to settle, not a final decree, 987.

proceedings under, 1164, 1165.

further consideration, reservation of, in suit to settle, 1164.

parties to suits to settle, 209, 262.

setting out where lands cannot be separated, 1164.

trial of question of fact in suit for settlement of, 1163, 1164.

in some states equity has no jurisdiction to settle, 1163 n.

BRANCH OF COURT. (See COURT.)

BREACH OF TRUST,

liability for, 189 n., 269 n.

survival of suit, 224 n.

BRICKS,

burning of, when restrained, 1635 n.

BRIEFS,

contents of, and counsel's notes in, how far privileged, 571, 1894.

contents of, on hearing of appeals, 1484 n.

of appeal motions, 1487 n.

cause, on hearing of, 977 n.

prepared, may be, when, 977; fee for preparation, 977 n.

demurrer, on argument of, 595 n.

exceptions, on hearing of, 768 n.

further consideration, on hearing on, 1378 n.

motions, on hearing of, 1598 n.

motion for decree, on hearing of, 826 n.

petition, on hearing of, 1608 n.

plea, on argument of, 694 n.

costs of, 1440 n.; where prematurely prepared, 1440 n.

minutes, to be left on bespeaking, 1009, 1010.

privileged from production of, how far, 571, 1831.

BRITISH MUSEUM,

proof of documents in, 882.

BRITISH SUBJECTS,

resident abroad, rights of their descendants, 47.

resident in enemy's country, and trading within license, may sue, 50.

secus, if trading without license, 50.

BROKER,

not a necessary party, 247

privity not destroyed by employment of, 825.

unlicensed person acting as, in London, must give discovery, 566.

BUILD,

breach of covenant not to, when restrained, 1654.

BUILDINGS,

erection of, when restrained, 1654 and n.

BULL (PAPAL).

exhibit, provable as, at hearing, 882.

[The references are to the star paging.]

BUSINESS (PLACE OF),

of solicitor to be written or printed, on writs, summonses, and other proceedings left at Record and Writ Clerks' Office, 453, 454.
in agency cases, that of principal solicitor also, 454.
change of, notice to be given at Record and Writ Clerks' Office, 454 and n.
service at of proceedings not requiring personal service, 454.

CANADA,

receiver of property in, when appointed, 1781.

CANAL,

tolls, receiver of, when appointed, 1727, 1731.

CANCELLED INSTRUMENT,

bill to obtain benefit of, not accompanied by affidavit, 398.

CANONRY,

receiver of, when appointed, 1780.

CASES (FOR OPINION OF COUNSEL),

production, when privileged from, 571, 572, 1888.

exceptions, where plaintiff and defendant jointly interested, 1834.
or in suits between *cestui que trust*, 1834.

CASES (PRINTED),

appeals to House of Lords on, 1498–1501.

(See APPEALS TO THE HOUSE OF LORDS.)

CAUSE,

showing against decree by infant, 73, 164–167.

(See DAY TO SHOW CAUSE. DECREE.)

costs in, what are, 1378, 1879.

CAUSE BOOK,

abatement of suit, entry of, in, 977.

compromise of suit, entry of, in, 977.

costs, when cause struck out of, 976, 984.

Registrar, kept by, 971, 972.

revivor, restoration of cause on, 977.

setting down cause in, 965.

striking cause out of, after lapse of one year, 977.

CAUSE PAPER,

demurrer, when placed in, 595.

last cause in, no longer privileged, 971 n.

plea, when placed in, 693.

Registrar, made out by, 971, 972.

CAVEAT,

against enrolment, 1024, 1025.

(See ENROLMENT.)

time within which, must be prosecuted, 1024.

where entered, 1024.

effect of, in preventing enrolment, 1024–1026.

CEPI CORPUS,

return of, to attachment, 470, 471.

answer, for want of, and subsequent proceedings, 490–494.

appearance, for want of, 471.

CERTAINTY,

answer, in statement of defendant's case in, 714.

bill, in statements of, 368–371.

objection for want of, how taken, 369, 371, 562.

reference to document for greater, 725, 838.

CERTIFICATE,

of assets, by master, 1294.

examination of married woman, of, 94, 95.

examiner's of default or misconduct of witness, 908.

expert of, called to assist court, how regarded, 983, 1330.

partition, of, 1159.

registration, of, of British ship, how far admissible without proof, 864.

solicitor, of, on information, 899.

for lower scale of costs, 1444.

on petition under Sir S. Romilly's Act, 1855.

GENERAL INDEX.

[The references are to the star paging.]

CERTIFICATE (ACCOUNTANT-GENERAL'S),

- completion of operation, of, 1812, 1813.
- delivery out of court, of, 1813.
- investment in stock or securities, of, 1792.
- minutes of order dealing with fund, left on bespeaking, 907, 1798, 1800.
- negative, when required, 1785.
- payment into court, of, 1787, 1788.
- payment or transfer out of court, of, 1812.
- sale of stock, of, 1811, 1812.
- voluntary, 1785.

CERTIFICATE (CHIEF CLERK'S), 1828.

- adoption and approval of, by Judge in vacation, 985.
- apportionment of deficient fund, of, 1846.
- deed of, approval and execution of, 1828.
 - where fund in court to be invested in land, 1841.
- filings, 1828.
- lease of, settlement of, 1343.
- partition, in suit for, 1161, 1162.
- receiver's account, of allowance of, 1758.
- receiver, of default by, 1758; of completion of security of, 1740.
- title, of, in case of investment in purchase, or on mortgage, 1341.
- support, who may be heard in, 1696.
- vacation, adoption and discharge of, when made in, 985.

CERTIFICATE (OR COUNSEL). (See COUNSEL.)

CERTIFICATE (RECORD AND WRIT CLERKS'),

- answer, of filing of, conclusive as to time of, 755.
- appearance, of none entered, 460, 462.
- bill filed, of, on application for injunction, 1668; for *ne creak*, 1709.
- bill, of printed, not filed, sufficient authority to tax the costs, 397.
- cause fit to be heard, of, 965, 966.
 - bill and answer, for hearing on, 966.
 - defendant, when granted at instance of, 966.
 - formal defendants, where there are, 482, 966.
 - fee on, 965 n.
 - form of, 865 and n.
 - indorsement on, 965.
 - motion for decree, for hearing on, 824, 825.
 - pro confesso*, where bill to be taken, 966.
 - time for granting, 966.
 - viva voce* where evidence ordered to be taken, 911, 966.
- de bene esse*, on application for examination, 987.
- exceptions for insufficiency, of filing of, 768.
- exemplification of decree or order, on docket for, 1068.
- further answer, of filing of, 768.
- memorandum of service of notice of the decree, of entry of, 436.
 - copy of, for Chambers, 436.
 - fee on, 436 n.
- memorandum of service, of entry of, and no appearance, after service of copy of the bill on formal defendant, 432.
- minutes, must be left on bespeaking, 482, 1010.
- proceedings in cause, of, on motion to dismiss for want of prosecution, 807.
- traversing note of, filing of, 514, 1010.

CERTIFICATE (TAXING MASTER'S),

- taxation, of, 1447-1450.
 - costs payable out of fund in court, form of, where, 1447, 1448.
 - filings and office copy of, 1444, 1445.
 - review of, application for, how made, 1449; evidence on, 1450.

CERTIORARI (BILL FOR WRIT OF), 1586.

- form of, 1586, and procedure on, 1586.

CESTUI QUE TRUST,

- aliquot portion of ascertained sum, one may sue for, 219.
- all accounting persons necessary parties to suit, by, for account, 248.
- breach of trust, may proceed against one trustee for, when, 268.
 - concurring in, necessary party to suit to repair, 223, 224, 226, 268, 269.
 - costs of trustee, when ordered to pay, 1406.
 - decree for execution of trusts may be obtained by one, but others must be served with notice of it, 226, 432, 438.

[The references are to the star paging.]

CESTUI QUE TRUST — continued.

- foreclosure suits, when represented by trustees, in, 215.
- life tenant, entitled to sale to raise costs, 1433.
- limitations, bound by trustees' neglect to set up statute of, 644.
- ne cœs* issued at instance of, 1700.
- party to suit by personal representatives, when not a necessary, 254.
- party to suit by a trustee, when not a necessary, 223–226.
 - co-trustee, against, for breach of trust, unless *cestui que trust* concurred, 223, 224, 226.
 - trust fund, improperly lent, to recover, 223.
- party to suit by trustee, when a necessary, 200 n., 219–223.
 - class, where trustee sues on behalf of a, 221.
- party to suit against trustee, when a necessary, under former practice, 256, 257; under present, 257, 258.
 - dispensed with formerly, because numerous, when, 256, 257.
 - production of documents by trustee, not ordered in absence of, 1827.
 - production of documents by trustee in suit by *cestui que trust*, 1884.
 - redemption suit, how far represented by trustee in, 259.
 - resulting trust, necessary party in suit relating to, 261.
 - trustees represent, when, 212, 221, 222, 227, 256, 257, 483 n.
 - trustee's interest conflicting, 228; or in contests *inter se*, 228.
 - administration suit, in, 222 n.
 - devisees in trust subject to payment of debts, 222 n.
 - executors with power of sale, 222 n.
 - forfeiture in suit to obtain declaration of, 222 n.
 - payment of debts or legacies, for, 257.
 - trustees, do not represent, 137, 222 n., 256, 257.
 - concurrence in breach of trust by *cestui que trust*, in case of, 222, 256 n.
 - conflict of interest of trustee and *cestui que trust*, 222, 256 n.
 - contests of *cestui que trust inter se*, 222 n., 256 n.
 - executors with implied powers of sale, 222 n.
 - sale under decree of trust properties, 222 n.
 - set aside settlement, in suit to, 256 n.
 - waste by, when restrained, 1630.

CESTUI QUE TRUST AND TRUSTEE,

- only one set of, costs, allowed between, when, 1432.

CHAMBERS (JUDGES'), 1322–1365.

- adjournment from, into court, 1322, 1328, 1338.
 - costs of, 1327, 1337.
 - directions, given in court upon, how authenticated, 1338.
 - discretionary with judge, 1328
 - statement of matter adjourned into court, 1338.
 - admissions, how recorded in, 1338, 1339.
 - advancement of infant, proceedings for, in, 1361, 1362.
 - affidavits, evidence in, adduced by, 1338; cross examination on, 1338.
 - amend bill, application for, when made at, 414, 1323.
 - answer, applications for time to, made at Chambers, 740, 741, 777, 1323
 - read against co-defendant in, when, 1339.
 - appeals from, orders made in, 1474.
 - apportionment of deficient fund at, 1346.
 - attendance at, 1336; adjournment in case of, 1336.
 - Attorney-General, attendance of, at, 1856.
 - business at, general statement of, 1623, 1624.
 - clerks at, 1325, 1328.

(See ASSISTANT CLERK. CHIEF CLERK. JUNIOR CLERK.)

- closing evidence, applications to enlarge time for, made at, 890, 1323.

concise statements, when brought in, 1338.

copies brought into, how written, 1338.

costs of parties attending without leave, 1337.

costs, power to award for non-attendance, 1337.

counsel, costs of, attendance of, in, 1338.

daily lists of business at, 1331.

delay in proceedings at, remedy for, 1330.

distinct solicitor, parties to be represented by, when, 1337.

evidence in, how adduced, 1338.

ex parte proceedings on default of attendance, 1336; reconsideration of, 1337.

guardian of infant, appointment and removal of, 1346–1356.

(See GUARDIAN.)

hearing, evidence taken at, may be read in, 1338, 1339.

GENERAL INDEX.

[The references are to the star paging.]

CHAMBERS (JUDGES') — *continued.*

- infants, proceedings in, with respect to, 1346–1365.
- impertinence in proceedings at, remedy for, 350, 351.
- investment on purchase or mortgage of land, proceedings in, under order for, 1339–1342.
- (See INVESTMENT ON PURCHASE OR MORTGAGE OF LAND.)
- jurisdiction of judges at, 1323.
- Legacy Duty Act, applications under, when made at, 1324.
- maintenance of infant, proceedings at, for, 1356–1362.
- (See MAINTENANCE.)
- management of property, proceedings for, in, 1342–1344.
- (See MANAGEMENT OF PROPERTY.)
- management of property of infant, proceedings at, 1362–1365.
- notice of decree, copy of certificate of entry of memorandum of service to be left at, 436.
- copy of order, giving party served leave to attend, to be left at, 437.
- orders at, 1008 n., 1323.
- drawn up, how, 1008 n.
- partition, how effected at, 1151, 1160.
- payment of money into court, application for, when made at, 1779.
- payment of money out of court, application for, when made at, 1324, 1796.
- pro confesso*, decree, proceedings on, when to be taken in, 528.
- in case of non-appearance, or decree taken, *pro confesso*, 528.
- production of documents, application for, made at, 1828, 1820.
- Property Law Amendment Act, application under, when made at, 1324.
- raising money by sale or mortgage, proceedings at, under order for, 1344–1346.
- (See RAISING MONEY BY SALE OR MORTGAGE.)
- receiver, appointment of, at, 1737–1740.
- (See RECEIVER.)
- scandal in proceedings at, how objected to, 364.
- stop-order, application for, when made at, 1694.
- summons, proceedings by, at, 1831–1336.
- (See SUMMONS.)
- summons and appointment book, 1331.
- Taxing Master, transmission to, of proceedings in, 1442, 1443.
- Trustee Acts, application under, when made at, 1324.
- Trustee Relief Acts, application under, when made at, 1324.
- vacation business, 985.
- witness, attendance of, in, how compelled, 1327.

CHAMPERTY,

- assignment *pendente lite* is not, 563 n.
- demurrer, because discovery will subject defendant to penalties of, 563.

CHANCELLOR (LORD),

- address of bill to, 2, 857.
- decree or order of, not reheard by Master of the Rolls or Vice-Chancellor, 1474.
- resignation, delivery of judgment by, after, 981 n., 1490.
- signature of, to docket of enrolment of decree or order, 1023.
- warrant of, to arrest contemnor, 467, 1686.
- to bring him to the bar, 490, 1048.

(See WARRANT.)

CHANCERY (COURT OF),

- address of bill, to, 552.
- Crown, at suit of, 6.
- equitable jurisdiction of Court of Exchequer transferred to, 6.
- except in revenue cases, *semble*, 6, 7, 138.
- general jurisdiction, a court of, 554, 628.
- infants, jurisdiction of, over, 1346.

(See INFANT.)

- information, when filed in, 5–16, 1686.

(See INFORMATION.)

- injunction to restrain proceedings in, 1623 n.

- jurisdiction, when changed by statute, 60 n.

- persons of unsound mind, jurisdiction in case of, 86 n., 1361.

- plea that it has not jurisdiction, 628, 629.

- proceedings in, when admissible as evidence, 867–872.

CHANCERY (OFFICER OF THE COURT OF). (See OFFICER OF THE COURT OF CHANCERY.)

[The references are to the star paging.]

CHANNEL ISLANDS,

answer, how taken in, 744.
mortgage in, foreclosure of, 1627.

CHAPEL (DISSENTING),

appointment of minister of, when restrained, 1653.

CHARGE,

annuity, of, does not make devisee trustee, 653, 654.
costs, when declared to be a, 1456.
general, evidence of particular facts when admissible under, 853.
parties to suits to establish, 277, 278, 279.

CHARGE AND DISCHARGE,

accounts formerly taken by, 1221 *et seq.*

CHARGE OF CONFEDERACY,

unnecessary, 1882 n.

CHARGES AND EXPENSES. (See Costs, Charges, and Expenses.)

CHARGING ORDER,

judgment, in aid of, 1038-1042.

abatement, made notwithstanding, 1039.
absolute, when and how made, 1038-1041; service of, 1041.
application for, how made, and evidence in support, 1040, 1041.
breach of, consequences of, 1089.
Chancery, when made in Court of, 1039.
common law judge, when made by, 1039.
discharge, or variation of, 1039.
equitable assignment has priority over, 1040.
ex parte, and *nisi*, in first instance, 1038; form and service of, 1040, 1041.
lien, solicitor's, has priority over, 1040, 1846.
stop order granted in aid of, when, 1040, 1694.
time for obtaining benefit of, 1041.

CHARGING PART,

of bill, 372-374; now usually included in stating part, 373; may be omitted, 1883 n.

CHARITIES,

apportionment of, under Sir S. Romilly's Act, 1855.
arbitration, reference to, in case of, consent of Attorney-General, when required, 1861.
Attorney-General, when necessary party to suit relating to, 138-138.
costs of suits relating to, 15, 16, 1482, 1486.
cy près, 18 n.
definition of, 1852.
heir of grantor, when necessary party to information for, 261.
heir, costs of, in suit relating to, 1883, 1486.
information for distinct, when multifarious, 10 n., 342, 343.
latitude allowed, rectification of mistakes in cases of, 13, 384, 1368.
parties to suit relating to, 261, 276.
payment out of fund belonging to, consent of Commissioners to, when necessary, 1797.
regulation of, under Sir S. Romilly's Act, 1854.
relators in information, relating to, 11, 15, 16.
[See RELATOR.]
relaxation of rules in favor of, 13, 384, 1368.
removal of site of, under Sir S. Romilly's Act, 1855.
Romilly's Act (Sir S.), jurisdiction under, 1853-1857.
sale of property of, instead of foreclosure, 285 n., 1265, 1266.
sale of property of, under Sir S. Romilly's Act, 1855.
sanction of Commissioners required to proceedings relating to, 16 n., 811, 1851
1852; unless by Attorney-General, or in a pending matter, 1851.
scheme for settlement of, 1855.
alteration of under Sir S. Romilly's Act, 1855.
separate and distinct, cannot be united in one suit unless homogeneous, 343.
Solicitor-General, when defendant to information relating to, 140.
suit on behalf of, when commenced by information, 2, 8.
terre-tenants, all, not necessary parties to suits on behalf of, 276.
trustees, form of order for payment of interest to, 1799, 1800.
trustees, appointment or removal of, under Sir S. Romilly's Act, 1856.
visitor of, power of, 1854.

[The references are to the star paging.]

CHARITIES (SIR SAMUEL ROMILLY'S ACT), 1853-1857.

- appeal from order, under, 1853, 1856.
- applicable, to what cases, 1854.
- application under, how made, 1858.
- Attorney-General may proceed under, 1853.
- attendance of, on proceedings under, 1856.
- Chambers, proceedings in, under, 1856, 1857.
- petition under, form, requisites, service, and hearing of, 1854, 1855, 1856.
- sanction of Charity Commissioners to, when necessary, 1856.
- proceedings under, same effect as if in a suit, 1856.
- settling scheme under, 1857.
- trustees, appointment of, under, 1856, 1857.

CHARITY COMMISSIONERS,

- awards of, rules of court, may be made, 1860, 1861.
- consent of, required to payment out of fund belonging to charity, 1797.
- sanction of, when required, to proceedings on behalf of charities, 16 n., 311, 1851, 1852.
- Lands Clauses Consolidation Act, not required to applications under, 1852.
- Romilly's (Sir Samuel) Act, to petition under, 1856.

CHARTER,

- corporations established by, how they sue, 20, 21.

CHATTEL,

- deposit of specific, in court, when directed, 1778.
- parties to suits by pawnee or depositee of, 228.
- sale of specific, when restrained, 1652.

CHATTEL REAL,

- married woman, of, assignment of, 123-125.

(See MARRIED WOMAN.)

CHEQUE (ACCOUNTANT-GENERAL'S),

- countersigning, 1806.
- documents left by solicitor on bespeaking, 1783, 1805 and n., 1806 n.
- form and issue of, 1805, 1806.
- new, evidence on which issued, 1806.
- periodical payments, for, 1807; evidence of conditions on which made, 1807.
- ready, when, 1806.
- void, when, 1806.

CHESTER,

- office copy of record of Court of County Palatine of, provable as exhibit, at hearing, 882.

CHIEF CLERK OF JUDGE, 1325-1328.

- accounts taken by, 1326.
- acknowledgment, taking of, by, 1326.
- advertisements, issue of, by, 1326.
- affidavit and affirmation, taking of, by, 1326.
- appointment of, 1325.
- business transacted by, 1327.
- certificate of, 1328.

(See CERTIFICATE, CHIEF CLERK'S.)

- control of judge, under, 1326.
- deputy of judge, merely the, 1327.
- directions of judge to, 1328.
- examination of parties and witnesses by, 1326.
- inquiries prosecuted by, 1326.
- married woman, examination of, not taken by, 94 n.
- meetings of, 1326.
- oath, administration of, by, 1326.
- official attendance of, 1326.
- pension of, 1325 n.
- powers of, 1326.
- qualification of, 1324; salary of, 1326 n.
- solicitor struck off roll on appointment as, 1326.
- summons, issue of, by, 1326.
- tenure of office by, and removal of, 1325.
- transfer of from one judge to another, 1325 n.

CHILD,

- illegitimacy of, parent when not bound to give discovery as to, 564.

[The references are to the star paging.]

- CHILDBEARING,**
age of, woman, when considered past, 1795 n.
- CHINA,**
receiver of property in, where appointed, 1731.
- CHOSE IN ACTION,**
assignor of, when a necessary party, 197 and n.; when not, 206.
usually made co-plaintiff, 200.
married woman, of, assignment of, 109, 118, 119-122, 127, 1696.
(See MARRIED WOMAN.)
married woman, of, Scotch law as to, 128.
married woman, of, suit for, 109.
sequestration, effect of, upon, 1052.
suit for, by Crown's grantee, 7.
- CHRISTMAS VACATION,**
commencement and termination of, 412.
- CHURCH,**
informations on behalf of Queen as supreme head of, 8.
- CINQUE PORTS,**
attachment against person within jurisdiction of, how directed, 463 n.
equitable jurisdiction, of, abolished, 554 n.
office copy of record of Court of, provable, as exhibit at hearing, 882.
- CIRCUS,**
performances at, when restrained, 1635 n.
- CITY,**
county of itself, attachment, how directed, in case of, 463.
- CIVIL DEATH,**
what is, 87.
- CIVIL LAW,**
influence upon equity, 357 n. (b).
judicially noticed, 546.
- CLAIMANTS (UNDER DECREE),**
appeals by, 1461.
costs of, 438, 1428.
mortgagee, under, costs of in redemption suit, 280.
motion by, 1591.
pauper, when admitted as, 89.
production of documents, how obtained by, or from, 1177 n., 1820 n., 1825.
- CLAIMS (UNDER DECREE), 1209-1214.**
Master's office, how brought in, 1209.
accompanied by affidavit, 1209.
meaning of the practice, 1209.
plaintiff in creditor's suit must prove under decree, 1209.
warrants, 1209.
examination of claimant, 1209.
general interrogatory, 1209; particular, 1210.
evidence, 1210; on affidavit, 1210.
bond debts, 1210.
defence — statute of limitations, 1210, 1211.
want of consideration, 1210, 1211.
allowance, 1211.
supplemental bill, when necessary, 1211.
exception to report, by claimant, 1212.
to what it extends, 1212.
costs, 1212, 1213; of creditor, 1212; other claimants, 1213.
of unsuccessful claim, 1213.
deficient fund, 1213.
contribution to, 1213, 1214.
direction as to, now omitted, 1214.
refunding, where assets insufficient to pay costs of suit, 1214.
- CLASS,**
costs of members of, in suit, 437, 438, 1428.
inquiry as to, when directed, 991.
liability of acting members of, 273.
principle of allowing one of a class to sue on behalf of himself and the others, 190, 191, 235.

[The references are to the star paging.]

CLASS — continued.

- members having opposing interests must be made defendants, 240; or if several classes some of each class added to represent the others, 241.
- instances in which principle acted on, 285, 287, 238, 239, 240, 241, 245, 438.
- appointees, under will of married woman, by one of several, 226, 238.
- common benefit, where suit for, though disapproved by majority, 242, 243.
- common, for rights of, 239.
- company, by one member of incorporated, 241.
- creditor of deceased person, by one, on behalf of others, 235.
- creditor, by separate, on behalf of joint and separate creditors, 237.
- creditors under trust deed, by one of several, 237.
- crew, by one of ship's, for prize-money, 239.
- institution, by one of several subscribers or proprietors of an, 239.
- land-owner, by one of several, in suit for modus, 239.
- legatees, by one of several, 238, 433.
- litigation, to protect property pending, 245, 433.
- majority of, disapproval by, 243, and n.
- next of kin, by one of several, 238, 433.
- numerous society, in suit on behalf of, 239.
- parish, by one of the inhabitants of a, 239.
- partnership, in cases of, 240.
- trading concern, by one of several joint proprietors of a, 238.
- trustees of a numerous class, in suit by, 221.
- testamentary appointees of married woman, by one of several, 226, 238.
- residuary legatees, by one of several, 235, 438.
- shareholders of unregistered company, 238.
- ultra vires*, when act is, 243.
- waste, in case of, 245, 433.
- instances in which principle not acted on, 240, 242, 248.
- advantageous to all, where suit not necessarily, 242.
- claim not necessarily reasonable with regard to all, 242.
- confirmed by members, when act complained of may be, 243.
- internal regulation, when act is matter of, 243.
- partnership, where dissolution sought, 239, 240.
- relief prayed is not beneficial for all, 242.
- separate demand in equity, where each member has, 241.
- suits by, 243, 316.
- suits against, when all members need not be made parties, to, 272–274.
 - cestuis que trusts*, suits against, 256.
 - charity, to suit by, against *terre-tenants*, 276.
 - joint-stock companies, to suits against, 272, 278.
 - lords of manors, to suit as to rights of common by, 274.
 - parishioners, to suit to enforce contract on behalf of, 272.
 - parsons, to suit by, for tithes, 274.
 - peace, to bill of, by city of London, to establish right to duties, 275.
 - tradesman, to suit by, against club committee, 272.
- suits against, where all the class held necessary parties, 275, 276.
 - terre-tenants* in suit to establish rent-charge, 276.
 - where claims of absentees not homogeneous with those present, 276.
- CLASS (SUIT),**
 - amendment, leave for, when given at hearing of, 245, 417.
 - conduct of, change of, 1169.
 - conduct of, where stayed on plaintiff's application, 795.
 - decree in, when made contingent, 218.
 - dismissal of bill, effect of, 244.
 - dismissal of, on satisfaction of plaintiff's demands and costs, 235, 236.
 - dismissal of bill on plaintiff's application, 244, 790 n.
 - after decree, not ordered even by consent, 244, 794, 795.
 - inadequacy of value, objection on ground of, inapplicable to, 243 n., 328, 329.
 - injunction in, form of, 1673.
 - inquiry as to, when directed in suit by one of a, 217.
 - misojoinder, suit not dismissible for, 304.
 - plaintiff, description of, in, 245, 359, 360, 417.
 - plaintiff must personally have good cause of suit, 244.
 - and sue *bona fide* for the benefit of the class, 245 n.
 - plaintiff has dominion over suit until decree, but not after, 244, 794.
 - staying proceedings in, after decree, 795.
- CLERGYMEN,**
 - communications to, not privileged, 576.

[The references are to the star paging.]

CLERICAL ERROR,

correction of, in answer by amendment, 783, 777, 782.
bill in, by amendment, 312 n., 410 and n.
Chief Clerk's certificate, in, 1031.
decree or order, in, 1030.
 bill of review not necessary for, 1028, 1575, 1576.
demurrer in, 591, 600 n.
exceptions, in, 764.

CLOSE DAYS,

not reckoned in computation of time, when, 354, 1596, 1606, 1607.

CLOUD UPON TITLE,

bill to remove, 557 n., 2040 n.

CLUB,

internal regulation not controlled, 333 n.
members, when necessary parties, 272.

CO-DEFENDANT,

action by, injunction to restrain, 1618 n., 1784 n.
answer of, co-defendant, when entitled to copy of, 757, 758.
 number of copies, and payment for same, 758.
answer, when read against co-defendant, 841, 842; in interpleader suits, 843.
bankruptcy of, plea of, 158.
costs, liability for, to solicitor, 1448.
death of, dismissal for want of prosecution after, 810.
decree, when made between, at hearing, 842 n.
 when on further consideration, 1370.
disability of, plea of, 681.
disclaimer, effect of, as to rights against co-defendant, 707.
evidence in behalf of, not to be used against co-defendant without notice, 891.
evidence taken in another cause, when admissible against, 869.
guardian *ad litem*, eligible to be, for infant, 161; or person of unsound mind, 176.
inconsistent titles, persons having, should not be, 233.
injunction, when granted against, 1618.
multifariousness, when he cannot object for, 337.
ne exeat, when granted against, 1705.
next friend of married woman, may be, on her appeal, 110 n., 187.
production by, not ordered before decree, 1825.
receiver, when granted against, 1734.
witness of, may be cross-examined by a defendant, 919.

CODE PROCEDURE,

adequate legal remedy, 680 n.
allegations of petition or complaint, 318 n. (a), 324 n. (a)
amendments under, 318, 411 n. (a).
answers, 354 n. (a), 728 n. (a), 787 n., 840 n., 843 n.
 demurrs to, 542 n. (a).

COHABITATION,

unmarried woman not bound to give discovery as to, 564.
wife declining when not entitled to a settlement, 104.

CO-HEIR,

administration decree, at instance of, without serving others, 218, 483.

COLLIERIES AND MINES,

manager, when appointed of, 1727-1729, 1768.
opening biddings in sales of, 1288.

COLLUSION,

affidavit of no, in interpleader suits, 894, 1562, 1563.
agents, arbitrators, or attorneys, charged with, when made defendants, 296-298.
allegation of, general, insufficient, 325.

[The references are to the star paging.]

COLLUSION — continued.

bill dismissed on account of, with costs, charges, and expenses, 1439.
cause against decree, how shown as, by infant, 173.
charge of, met by negative averment in plea, 614.
creditor or legatee may sue debtor to estate, in case of, 823.
but personal representative a necessary party, 200, 249.
debtor to estate, suable on the ground of, 200.
decree obtained by gross, impeachable by original bill, 173 n.

COLONIAL COURT,

affidavits and pleadings filed or deposited in, how proved, 868.
decree, judgment, order, and proceedings of, how proved, 863.
documents admissible in, without proof, admissible also in England, 863, 864.

COLONIAL GOVERNMENT,

may sue in this country, 20.
order, proclamation, or regulation of, proof of, 863.

COLONIES.

boundaries of, Attorney-General a party to suit relating to, 130.
ne exeat against person domiciled in, 1703.
proclamations, acts of state, and treaties of, how proved, 863.
will proved in, establishment of, 876.

COMBINATION AND CONFEDERACY,
charge of, now omitted, 356.

COMMENCEMENT OF PROCEEDINGS,

ordinarily by English bill, 2.
in Massachusetts, by bill, petition, or declaration in contract or tort, 2 n.
if discovery sought, 2 n.
information, 2.
summons, 3.
special case, 3.
under statutes, 3.
conformity of American to English practice, 1 n.

COMMISSION,

to take testimony, 915 n., 916 n.
to take examination of *feme covert* unable or unwilling to attend court, 93.
to take answer, 748-758.

(See ANSWER.)

for the examination of witnesses abroad, 915.

how prepared and issued, 915.

issued by another court, depositions under, not admissible unless commission produced, 868.

form of, 916.

number of commissioners, and by whom named, 916 and n.

competency to act as, 916 n.

practice on a, 917.

generally regulated by statute or local rules, 917 n.

rules concerning in the United States courts, 915 n., 916 n., 918 n.

attendance of witnesses, how compelled, 918 and n.

where witness does not speak English, 918.

translation of depositions, 919.

abatement of suit, 919.

re-examination of witnesses, 919.

costs of commission, 919.

COMMISSION TO TAKE ANSWER. (See ANSWER. COMMISSION.)

COMMISSION TO SETTLE BOUNDARIES. (See BOUNDARIES.)

COMMISSION TO ASSIGN DOWER. (See DOWER.)

COMMISSION TO EXAMINE WITNESSES. (See EXAMINATION OF WITNESSES,
COMMISSION FOR.)

COMMISSION OF PARTITION. (See PARTITION.)

COMMISSION OF REBELLION,
abolished, 1048 n.

COMMISSION OF SEQUESTRATION. (See SEQUESTRATION.)

COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

appointment and powers of, 744; fees taken by, 744 n., 745 n.

affidavit not taken by, if concerned in the cause, 891.

[The references are to the star paging.]

COMMITAL,

- abuse of, or violence against process server, or scandalous or contemptuous words against the court, for, 456 n.
- arrest on Sunday, under order for, valid, 467.
- injunction or restraining order, remedy for breach of, 1683.
- insufficient answer after, 771.
- overruled plea, not considered an answer for the purpose of, 772.
- receiver of, for not bringing in account, or paying in balance, 1754, 1755.
- receiver, for disturbance of possession of, 1748.
- sequestration, of, for abuse of power, 1060.
- special contempt, for, 1069.
- witness, of, for contempt, 909.

COMMITTEE (OF IDIOT OR LUNATIC),

- answer of idiot or lunatic put in by, 175, 178, 753.
- heading of; and jurat to, 781.
- oath or signature, how put in without, 788.
- admission, whether it can be read as, 178, 841.
- Declaration of Title Act, concurrence in application under, 1872.
- defends suit on behalf of lunatic, unless plaintiff adversely interested, 175, 176.
- as exeat*, granted on affidavit of, on behalf of lunatic, 1705.
- new, appointment of, supplemental order on, when a defendant, 176; where plaintiff, 85.
- party to suit on behalf of idiot or lunatic, 84; usually co-plaintiff, 85.
- party to suit against lunatic, 176, 249; usually co-defendant, 176.
- unless a plaintiff, or having adverse interest, 176.
- plea on behalf of lunatic put in, by, 758.
- sanction of Lord Chancellor, or Lords Justices, to suit by, 85, 311.
- or defence, 176; or deviation from ordinary course of practice, 178.

COMMON (RIGHT TO),

- parties to bill relating to, 274.

COMMON LAW,

- action at, (See ACTION AT LAW).
- discovery at, 1625.
- discovery, bill of, in aid of proceedings at, 1556.
- equitable defences at, 1625.
- extension of jurisdiction of, jurisdiction in Chancery not abrogated by, 552, 1625.
- injunction, when issued at, 1641, 1642.
- new trial, when directed at, 1125–1139.
- patent cases, account, injunction, and inspection obtainable at, in, 1642.
- reading verdicts in evidence, 868.

COMMON LAW JUDGE,

- assistance of, how obtained, 983; in Appeal Court, 1471 n.
- charging order, when made by, 1039.
- misdirection of, new trial on ground of, 1126, 1127.
- mistake of, new trial on ground of, 1126, 1127.
- refusal of, to postpone trial, new trial on ground of, 1128.
- wrong party to begin, allowing, new trial on ground of, 1128.

COMMON LAW SIDE OF THE COURT OF CHANCERY,
proceedings in, formerly entered in French or Latin, 2.

COMMON LAW PROCEDURE ACT, 1854,
statutory jurisdiction with respect to arbitrators, 671, 1857–1862.
(See ARBITRATION. ARBITRATOR. AWARD)

COMMON SEAL,

- answer of corporation aggregate put in under, 146, 735, 745.
- proceedings, where custodian of seal refuses to affix it, 146.
- plea of corporation aggregate put in under, 688.

COMMONS (MEMBER OF THE HOUSE OF). (See PARLIAMENT, MEMBER OF.)

COMPANY (LIMITED),

- security for costs, when ordered to give, 26 n.
- undertaking as to damages, how given by, 26 n., 1666.

COMPANY (PUBLIC),

- description of, in decree or order, 1006, 1784, 1785.
- directors of, when they may be sued by public officer, 26.
- payment into court by, 1772.

[The references are to the star paging.]

COMPANY (PUBLIC) — *continued.*

- individual member of, when he may sue on behalf of himself and the others, 241;
- when he may sue directors or company, 25.
- injunction against to restrain *ultra vires*, or excessive acts, 1650.
- limited, security for costs, when ordered to give, 26 n.
- undertaking as to damages, how given by, 26 n.
- public officer, when it sues by, 26; is sued by, 26, 147.
- receiver, when appointed, in care of, 1727, 1728.
- registered, how it sues and is sued, 26.
- service of the bill upon, how effected, 445.
- unregistered, class suit on behalf of, when permitted, 238.

COMPANIES ACT, 1862.

- certificate of incorporation under, effect of, 26, 147.

COMPENSATION,

- sale by court, amount of, how determined on, 1283.

COMPETENCY (MENTAL),

- inquiry as to defendant's, 177.

COMPLIANCE,

- with irregular order, a waiver of the irregularity, 512, 513.

COPROMISE,

- adjournment of hearing on account of pendency of, 976.
- application for compromise of suit, how made, 1588.
- Attorney-General, by, 16 n.
- client withdrawing assent, 1031 n. (a).
- counsel, by, 974 n., 1840 n. (a).
- costs, cause not heard on question of, after compromise, 795, 1380 and n.
- dismissal of bill, by order of course in breach of, irregular, 790.
- entry of, in cause book, 977.
- issue, effect of compromise of, 1148.
- lien on fund, solicitor's, effect of compromise on, 1846.
- next friend, by, 68 n.
- power of court, to, on behalf of person under disability, 66, 164 n.; in suit for married woman's reversion, 119 n.
- setting aside, on application of one plaintiff, effect of, 801.

CONCISE STATEMENT,

- Chambers, when brought into, 1838.
- prefixed to interrogatories for examination of plaintiff, 1554.

CONCURRENT INTERESTS WITH PLAINTIFF,

- persons having, when necessary parties, 190-245.

CONCURRENT SUIT (STAYING PROCEEDINGS IN), 797-801.

- administration suits, after decree in one, 685, 797-801.
- creditor's suit, when not stayed till executors have answered, 799, 800.
- identical terms, when suits not identical, 797, 798.
- Lancaster, where one suit in Court of Duchy of, 798.
- residuary legatee's suit preferred to executor's, 798.
- snatching decree in case of, 799.
- application, how and by whom made, 798.
- summons, when suits commenced by, 1882.
- conduct of suits, to whom given, 800.
- costs, in cases of, 799.
- infant's suits, in cases of, 69, 70, 797.
- transfer, order for, when necessary, 798.

CONDITIONAL APPEARANCE. (See APPEARANCE.)

CONDITIONAL ORDER,

- consequence of non-performance of the condition, 742.
- dismissal of bill for, how made absolute, 1598.

CONDITIONS OF SALE,

- ordinary on sale by Master, 1269; special, 1269.
- timber, on sale of, 1272.

CONDUCT,

- alleging, 824 n., 849 n.

CONDUCT OF CAUSE, 1169, 1170.

- class, of suit by one of a, under 15 & 16 Vic. c. 86, § 42, 438 n.
- dilatory plaintiff, when taken from, 1169.

[The references are to the star paging.]

CONDUCT OF CAUSE — *continued.*

change of, when directed, 1169; effect of, 1170.
pending partial abatement, 1170.
concurrent suits, in case of, 800, 1169.
creditor's suit, in, 1169.
creditor's suit, in, effect on solicitor's lien, 1844.
stay, on plaintiff's application, of proceedings, after partial abatement, 795.
decree, of proceedings under, 1169.
infant's suit, of, 70; next friend responsible for, 76.
legatee's suit, 1169.
revivor, effect of, on, 1390.
defendant having, cannot file supplemental statement, 1580.
right of person, to whom given, to inspect papers, 1170.

CONFEDERACY,

charge of, 355, 1882 n.; now omitted from bill, 358, 1882 n.

CONFessions,

pleadings, must be noticed in, 856.

CONFIDENCE (PROFESSIONAL). (*See PROFESSIONAL CONFIDENCE.*)**CONFIRMATION,**

parties applying for, 1274 n. (a).
reports, what do and what do not require, rules and practice, 1303–1807 and notes.
(*See REPORTS.*)

decrees requiring confirmation of further order of court, 996 *et seq.* and notes.
against infants, 997 and n.

in cases of foreclosure and redemption, 997–999 and notes.

CONFIRMATION OF SALES ACT,

sale with sanction of court of land and minerals separately under, 1873.
sanction, how given, 1873.

CONSENT,

adjournment of cause by, 975.
affidavit, to filing of, though unauthenticated alteration therein, 895
answer, to filing though defective or informal, 743.
authority of counsel to give, 974.
decree by, appeal from, not allowed, 973, 1459.
impeached by original bill, 974, 1584, 1585.
not by bill of review, or bill in nature of bill of review, 973, 974.
decree by, not made in case of infants, 164, 974.
deviation from procedure, to sanction of court or judge to, if given by next friend
of infant, 74; of married woman, 112; of person of unsound mind, 86.
deviation from procedure, to, sanction of Lord Chancellor or Lords Justices to, on
behalf of committee of lunatic, 86.
enlargement of time to answer, to order for, 741.
insertion of, in decree or order, 1008.
married woman, of, to payment of her fund to her husband, 90–101.
(*See EXAMINATION OF MARRIED WOMAN.*)
to order of court how far binding on her, 113 n.
new next friend, of, to act, how proved in case of infant, 78.
of married woman, 112.
new trustees, of, to act, how proved, 1263.
payment out on undertaking to apply, to, 1800, 1801.

CONSENT CAUSE, 978.**CONSIGNEE,**

appointed, when, and how, 1781, 1768.
interest on balance, when allowed, 1769.
priority of, for payments sanctioned by the court, 1769.
security given by, 1731.

CONSOLIDATION OF SUITS,

generally, 839 n., 797 n., 1120 n.
concurrent administration suits, in case of, 797, 798.
infringement of patent, of suits to restrain, 839 and n., 801.

CONSPIRACY,

discovery of facts amounting to, must be given, when, 565.

CONSUL,

intervening for his sovereign's property, 141 n.
resident abroad on service, not required to give security for costs, 28.
trading, resident in enemy's country, cannot sue, 50.

[The references are to the star paging.]

CONTEMPT,

- abatement, effect of, on process of contempt, 1542.
- partial, process of contempt, when issuable pending, 1544.
- total, process of contempt pending, irregular, 1542, 1543.
- abusive language, 1069 and notes.
- answer; process of contempt for want of, 488-504.
 - resumption of, if answer insufficient, 508, 766.
- appeal, 1069 n. (b).
- appearance, process of contempt for want of, 460-472.
- arrest on Sunday, on order for committal for, valid, 467.
- breach of injunction, or restraining order by, 1688.
- circulars, 887 n. (b).
- clearing, 507, 513, 1454.
 - acceptance of answer, and costs by, 507.
 - answer, when for want of, process not executed, 507; executed, 508.
 - costs, when for non-payment of, 1458, 1454.
 - decree or order, when for disobedience to, 1046, 1047, 1063.
 - examination, when for not putting in, 1188.
 - executor, by, as a pauper, 38, 501 n.
 - order for, necessary, if contemnor in custody, 507.
 - staying proceedings, until contempt cleared, 507.
 - motion to dismiss for non-prosecution, irregular after order for, 806.
 - costs of, 472, 490, 491, 501, 502, 507, 509.
- (See COSTS.)
- when contempt is not proved, 1688 n.
- costs, process of contempt for non-payment of, 505 n., 1453-1455.
- staying proceedings, when plaintiff in contempt for non-payment of, 797.
- counsel fees not imposed as a punishment for, 508 n.
- de bene esse*, examination when defendant in, 936; order for, 987.
- decree or order, process of contempt for disobedience to, 1045-1063.
- discharge of process of, for irregularity, 510, 1068.
 - application for, how made, 510; when made, 512.
 - dismissal for want of prosecution, defendant in contempt, cannot move for, 806.
 - effect of issue of process of, on proceedings in cause, 504-507, 1063.
 - application by contemnor, usually a bar to, 504, 1591.
 - rule only applies to voluntary applications, 505.
 - exceptions to the rule, appeals, 507.
 - another suit, applications in, 504.
 - attachment for want of answer, issue, of, 506.
 - discharge for irregularity of contempt process, application for, 505, 506.
 - irregularity in proceedings under contempt order, 506.
 - necessary steps in the suit, 504, 506.
 - notice of motion may be given, though motion cannot be heard, 505.
 - opposition to special application against contemnor, 506.
 - pauper, application for leave to defend as, 504.
 - renewal of previous application, 504.
 - scandal, for removal of, 507.
 - taxation of costs, 506.
 - evidence, comments upon, 887 n. (b)
 - exceptions taken on the question of jurisdiction, 2150 n.
 - execution of process of, best endeavor must be used to procure, 462.
 - executor in, when not a necessary party, 252.
 - hearing of cause, contempt of plaintiff not an objection to, 980.
 - irregular, action against person acting under, restrained, 511, 1618.
 - costs occasioned by, payment of, 511.
 - issue of process, contempt not incurred until, 506.
 - jurisdiction, 1683 n. (a).
 - jury trial, 1683 n. (a).
 - newspapers, by, 887 n. (b), 1069 n. (b).
 - pauper, process of contempt at instance of, must be signed by his solicitor, 41.
 - prisoner for, provisions for relief of poor, 501-503.
 - discharge of, on death of sole plaintiff, 510.
 - motion by, for discharge, on revivor of the suit, 1548.
 - recitals in orders in cases of contempt, 1002, 1008.
 - revivor, issue and resumption of process of contempt after, 1544.
 - service, in matters of, must be personal, 453.
 - affidavit of service, effect of irregularity in, 898.
 - special, punishment for, 1069.
 - trifling pleadings, a, 354 n.

[The references are to the star paging.]

CONTEMPT — *continued.*

unexecuted process of, may be abandoned, 462.
waiver of, what is, 508—510, 755, 1063.

(See **WAIVER**.)

CONTEMPTUOUS WORDS,

against court, or process thereof, punishment for, 1069.

CONTINGENCIES,

payment out of fund subject to, on what terms directed, 1793.

CONTINGENT INTEREST,

persons having, when necessary parties, 217.
suit to secure, costs of, 1426.

CONTINGENT REMAINDER-MEN,

intermediate, when necessary parties, 266.
not in *esse*, barred if tenant for life a party, 228, 265, 266.
title-deeds, inspection of, cannot sue for, 316.
trust property, may sue to secure, 316.
when made parties, 228, 265, 266.

CONTINUANCE,

war, in case of, 52.

CONTRACT,

lunatic, by, when set aside, 85.
married woman's separate estate, bound by her, 187.
plaintiff claiming by, need not state title fully, 320.
purchase of, when complete on sale by court, 1274.
rescind, parties to suit to, 279 n.
sub, person entitled under, when necessary party, 196.
unilateral, how enforced, 231 n.

CONTRIBUTION,

direction for contribution to costs of suit, 1213; now omitted, 1214.
parties to suits for, 270, 271.

CONTRIBUTORY,

Winding-up Act, under *ne execat* against, 1705.

CONVERSATIONS,

admissions, used as, when they must be pleaded, 856.

CONVEYANCE,

decree, operating as, 1061 n.
mutual, on partition, 1161.
person from whom none required, service of ordinary process upon, unnecessary,
428.

(See **COPY OF THE BILL. DEFENDANT, FORMAL**.)

plea of, 673.

purchase under decree, on, 1279—1281.

certificate of approval of, 1279

delivery of, to purchaser, affidavit of, 1011.

execution of, how enforced, 1279, 1280

preparation of, 1279.

settled by master, when, 1279.

settlement of, rectification of decree by inserting directions for, 1028, 1029.

specific performance suit, in, settlement of, 1261.

statement of in bill, 363—365.

CONVEYANCER,

communication to, not privileged, 576.

CONVEYANCING COUNSEL, 1828—1830.

appointment of, 1828 notes.

costs, occasioned by employment of other counsel for same persons, 1829.

fees of, 1829.

names of, 1829 n.

opinion of, when taken, 1828; how objected to, 1828.

reference to, how made, 1217, 1828, 1829.

rota of, 1828.

settlement of deeds, assistance of, in, how obtained, 1282.

title, reference of, to, on investment in purchase or on mortgage, 1340.

in suit for specific performance, 1217.

[The references are to the star paging.]

CONVICTION,

consequences of, as to property, 53-56.
disability arising from, in case of plaintiff, 45, 58 *et seq.*; of defendant, 130, 156.
plea of, defendants, 57, 631; of plaintiffs, 57, 630; put in without oath, 687.
reversal of, effect of, 57.
witness, proof of previous conviction of, 1103.

CO-OBLIGORS,

answer or declaration of one read against others, 841, 842 and notes.
parties to suit for contribution, when necessary, 270, 271.
if numerous, some may represent others, 272.

CO-PLAINTIFFS,

accountable to each other, persons who are, should not be, 234.
nor devisee and heir-at-law, 238.
nor settlor and purchaser, in suit to avoid settlement, 234.
addition of, after answer, not of course, 294.
addition of, effect of, on evidence taken, *de bene esse*, 940.
administrators need not all be, 227.
appeal by, when permitted, 1473 n.
assignees of bankrupt need not all be, 227.
assignor of *chase in action* usually joined as, 199.
bankruptcy of, motion for revivor or dismissal of bill on, 63, 814.
co-executors need not all be, 226, 227.
common, rights of, who may be, in suits to establish, 239.
creditors of same debtor may be, 235.
death of, before decree, who entitled to revive on, 1538.
dismissal of bill for want of prosecution after, 814.
motion for revivor or dismissal of bill on, 813.
devisee and heir-at-law should not be, 233.
disavowal of suit by, proceedings upon, 309, 792.
dismissal of bill against, on his own application, 792.
husband and wife, when they may be, 89, 90, 108, 109.
inconsistent titles, persons having, should not be, 233.
infant, when leave given at hearing to amend, by making defendant, 418.
interests of, need not all be equal, 345.
liability to solicitor for costs, 1449.
lunatic, in suit on his behalf, 9, 88, 208.
marshal assets, simple contract and specialty creditor should be, 237.
misjoinder of, 301-304.
persons not interested, or having separate and distinct interests, should not be, 301.
refusal to proceed with suit, proceedings on, 403, 404.
revivor by common order, on, 1525, 1527.
repudiation of suit by infant co-plaintiff, 78.
separate solicitor, when infant, may appeal by, 78.
settlor and purchaser should not be, in suit to set aside settlement, 234.
striking out names of, by amendment, 403.

COPY,

certified, when admissible as evidence, 864

**COPY OF THE BILL (PROCESS BY SERVICE OF, ON FORMAL DEFENDANTS), 192,
428-433.**

amendment of bill, in case of, 429.
appearance, entry of, by party served, 432, 588, 589; effect of, 432.
(See APPEARANCE.)

applicable, in what cases, 431; effect of service, 432.

Attorney-General, not applicable in case of, 43

death of party served, 429.

husband and wife, service in case of, 429.

infant, not applicable in case of, 428.

jurisdiction, person out of, not applicable in case of, 429.

memorandum of service, entry of, and certificate thereof, 439-442, 1010.

(See MEMORANDUM OF SERVICE OR COPY OF THE BILL.)

misnomer of defendant, how remedied, 430.

obligatory, practice not, 431.

plaintiff not adopting, liable to costs, 431.

prayer of bill, 355, 356, 387, 388.

proceedings void, if case not proper, 430.

replication, filing, in case of, 833.

revivor and supplement, bill of, applicable to, 428.

[The references are to the star paging.]

COPY OF THE BILL — continued.

service of, on formal defendant, how effected, 429.
substituted, not directed, 429.
time for, and enlargement of, how procured, 429.
course, where service not effected in time, 430, 431.
(See SERVICE.)
supplemental bill or statement, service of, 429.
unsound mind, person of, not applicable in case of, 431.

COPYHOLD LANDS,

discovery of, waiver of forfeiture in suit for, necessary, 387.
forfeiture of, on attainer, 54 n.
lord of manor, when necessary party to suit concerning, 263, 264.
sequestration, bound by, 1054.
will of, proof of, in suit to establish, 876.

COPYRIGHT,

definition of, 1643 n.
abridgment, when not an infringement of, 1645.
account of profits, under general prayer, 378 n., 1642 n. (a).
alien of, when protected, 46.
assignment of, proof of, 1644, 1670.
blasphemous, immoral, or irreligious publications, in, not protected, 1644.
copy, 881 n. (b).
damages in cases of, 1643 n.
demurrer, 567 n.
engravings in, how alleged, 366.
evidence on application, 1644, 1670.
extracts, when not a piracy of, 1645.
injunction, in cases of, principles on which granted, 1643, 1644, 1646 n.
issued, without ascertaining the amount of the piracy, when, 1646.
whole work, extended to, when, 1646.
perpetual, when made at hearing, 1681.
refused till trial of right, when, 1648.
international, 46.
letters, 1647 and n.
law reports, 1646 n.
piracy of, how ascertained and detected, 1645 and n., 1646 and n.
 what constitutes, 1645 n., 1646 n.
quotations, when not a piracy, 1645.
road-book, piracy of, restrained, 1645.
separate bills necessary for each piracy, 339, 1644.
title, affidavit of, contents of, 1644.
 use of, restrained, when, 1648.

CORPORATION,

address of, statement of, not required in bill, 359; *see* 357 n.
affidavit accompanying bill of, by whom sworn, 394 in n., 396.
amendment of bill of, affidavit on, by whom sworn, 415.
aggregate answer of, 146; proceedings in default of, 497.
 should be signed by president, and usually by secretary or cashier,
 146 n.
books and manuscripts must be searched for information, 146.
common seal, put in under, 146 and n., 735 and n., 746.
 effect of answer under common seal, 735 n., 845 in n., 846 n.
 may make and adopt any seal, 146 n., 735 n.
 proceedings when custodian refuses to affix seal, 146.
appearance of, 146; proceedings in default, 477, 478.
bill, service of, on, how effected, 445; indorsement on copy served, 445.
costs, payment of, by, how enforced, 1455.
decree or order, how enforced against, 1067; indorsement on copy served, 1044.
distringas against, answer, for want of, 497.
 appearance, for want of, 477, 478.
costs, for non-payment of, decree on order, 1454, 1455.
 for non-obedience to, 1454, 1455.
injunction or restraining order, remedy for breach of, by, 1687.
 service of writ of, on, 1674 n.
names of members need not be mentioned in suit by, 22.
payment out of fund belonging to, form of order for, 1809.
plea by, how put in, 688.
pro confesso, bill when taken against, 407, 498, 523.

[The references are to the star paging.]

CORPORATION — *continued.*

- production of documents by, affidavit on, by whom made, 1821.
- answer by, 717 n., 843 n.
- citizenship, 357 n.
- consolidated, 357 n.
- corporate name, sue and is sued by, 20-23, 143.
- description of, in decree or order, 874, 1785.
- foreign, suits by, 24; service of notice of motion on, how effected, 1596.
 - may sue in corporate name, 24 n.
 - chartered in one State may sue in another, 24 n.
 - one State may sue as a corporation in another, 24 n.
 - security for costs in suit by foreign, 24 n.
 - proof of legal existence of foreign, 24 n.
- foundation, sue and sued by name of, 20, 21, 143.
- grant to, by statute, valid, though true name not used, 21, 22.
- head of, a necessary party to suit by or against, 21, 143.
 - but need not be called by his name, 22.
 - death of, not an abatement, 22.
 - suit in name of head not permitted, unless specially authorized, 21.
- impeachment of transactions effected in its own name by, 22.
- individual members not necessary parties, and need not be named, 22, 143.
- information against, 10 n.
- injunction against, to restrain acts which are *ultra vires*, 1650.
 - or excessive, 1650.
- interpleader by, when title to its stock disputed, 147.
- member or officer of, may be sued for unauthorized or illegal acts, 144; may be made defendant for purpose of discovery, 148-145, 296, 322, 378; *secus*, if a mere witness, 145; costs of officer when made defendant, 146.
 - answer of, not read against corporation, 842 n.
 - name, use of as plaintiff, 26 n., 241 n.
 - party, when a necessary, 26 n.
 - plea that plaintiff is not a, 630 n.
 - prescriptive name, when it sues and is sued by, 21, 143.
 - proof of proceedings of, 865.
 - relator, or relator and plaintiff, may be, 13.
 - seal of, thirty years old does not prove itself, *seable*, 874.
 - sequstration against, answer, for want of, 497, 498.
 - appearance, for want of, 477, 478.
 - costs, for non-payment of, 1454, 1455.
 - decree or order, for non-obedience to, 1051 n., 1061.
 - injunction or restraining order, for breach of, 1687.
 - (See SEQUESTRATION.)
 - service upon, 441, 445-447.
 - sole, must show in what right he sues, 23.
 - death of, an abatement, 23; who entitled to revive, on, 23.
 - defends suit like private individual, 146.
 - payment of income to, form of order for, 1799.
 - may be parties to suit to restrain transfer of stock or payment of dividend, 147, 148.
 - stockholders, suits by, 26 n., 144 n., 242 n.
- CORRUPT MOTIVES,**
 - imputation of, when not scandalous, 348.
- CORRUPTION,**
 - award, setting aside, for, 297, 553, 670.
 - plea of arbitrators to bill, to set aside, form of, 298, 671.
- COSTS, 1376-1458.**
 - abandoned motion, of, 505, 807, 811, 1879, 1597, 1601, 1602, 1603
 - abandoned proceedings, stay of subsequent proceedings for same object, until payment of, 796, 1380.
 - abatement of cause, on neglect to certify, 977.
 - account, in cases of, 1396, 1397.
 - apportionment of costs in suit for, 1408.
 - accounting party from whom balance is due, when not ordered to pay, 1396.
 - administration, letters of, costs of taking out, mortgagee, when allowed, 1387, 1388
 - administration, letters of, to a share, costs of taking out, when allowed out of general estate, 1431 n.
 - administration, of suit for, 1410, 1411, 1422-1433.
 - administration, costs of, first charge on fund, 1411.

[The references are to the star paging.]

COSTS — *continued.*

- apportionment of costs in, 1432.
- creditor, where suit by, 1422.
- general estate, paid out of, 1425, 1431.
- heir, costs of, in, 1382.
- lapsed or revoked legacy, not thrown on, 1430.
- legatee where suit by, 1422.
- mortgagee, where suit instituted by, 1389.
- order of payment of, when estate insufficient, 1423.
- retainer of personal representative has priority over, 1424, 1758.
 - secus*, retainer of devisee subject to charge of debts unless plaintiff proceeds after notice of claim, 1425.
- specific legacies not liable to, 1429.
- undisposed of property, not thrown upon, 1429, 1480.
- unnecessary suit, of, 1413.
- administrators, of, 1382, 1411-1428; administrator *ad litem*, of, 1422.
- affidavits of, not allowed, unless expressed in first person, 894.
 - interlocutory applications, on, 1440 n.
- motion for decree, of application for leave to file affidavits, after expiration time, 821.
- settlement of affidavits by counsel, of, 901.
- agents, of, when allowed, 1411.
- amendment of bill, of, 411.
 - course, under order of, 411.
 - defendant's, when costs in cause, 423.
 - defendant's, occasioned by striking out part of bill, 425, 426.
 - demurrer, where amendment after, 593.
 - irregular amendment, occasioned by, 425.
 - payment of, 423 and n., 1455.
 - plea, when amendment after, 692, 698, 699.
 - special application for costs of, 414.
- annuity, costs of suit for, where no default, 1406.
- answer, of, to amended bill, where vexatiously required, 777.
 - cross-bill of discovery to, 1555
- answer, costs occasioned by evasive, 785.
 - improper, by guardian *ad litem*, 163.
- non-attendance of commissioners to take, occasioned by, 750.
- printed schedule to, of, 758.
- second commission to take, costs of, 752.
- separate, costs of, where filed by same solicitor, 780.
- third insufficient answer, occasioned by, 773.
- time for, costs of application for enlargement of, 741.
 - where defendants' interest joint, 729, 780.
- written, costs of brief of, 758.
- answer, reading, by defendant on question of, 848, 1380, 1381, 1396.
- appeal for, not permitted, 1463-1466.
 - exceptions, when given by Act of Parliament, 1465.
 - estate or fund, where costs chargeable on, 1463, 1464.
 - incumbrancer, when appeal brought by, 1464.
 - principle, in matters of, 1462, 1463.
 - relief, when payment of costs part of, 1463.
 - rule not evaded by coupling an unfounded ground of appeal, 1466.
- appeal motions, or petitions, of, 1488, 1603, 1612.
 - when new evidence adduced, 1488, 1603, 1612.
- appeals and rehearings in Chancery, costs of, 1490.
 - costs in the cause, when made, 1490.
 - not included in, unless specially mentioned, 1490.
 - dismissal of appeal, in case of, 1490; where recommended below, 1491.
 - new evidence, how affected by, 1490.
 - omission, to provide for rectification of, 1491.
 - respondent, when ordered to pay, 1490.
- appeals to House of Lords, of, 1503, 1504.
 - Court of Chancery, when enforceable by, 1504.
 - difference of opinion among the Lords, in case of, 1503.
 - dismissal of appeal, in case of, 1503.
 - default of parties, when in consequence of, 1501.
 - partial, when, 1503.
- estate, when ordered to come out of, 1503.
- improper objection to appeal, in case of, 1503.

GENERAL INDEX.

[The references are to the star paging.]

COSTS — continued.

- reversal of decree or order, in case of, 1503 ; when reversal partial, 1503.
- costs of prosecution of decree not included in, 1503.
- service of order for, 1504.
- enforced, how, by House of Lords, 1504.
- taxed, how, 1504.
- appeal to House of Lords, on withdrawal of, 1497, 1498.
- appearance entered by plaintiff for defendant, of, 478, 538.
- application for, should be made at hearing, 1410.
- apportionment of, between parties, 1381 n., 1407-1409.
 - account, in matters of, 1407, 1408.
 - dismissal of bill, in case of, 1408 ; when dismissal partial, 1407.
 - how effected, 1449.
 - issues found different ways, in case of, 1407.
 - set-off of apportioned costs, 1408, 1409.
 - specific performance suits, in, 1407.
 - tithe suits, in, 1407.
 - trustees serving in defence of, 1413.
- apportionment of costs between different funds, 1432.
- appointed and unappointed parts of a fund, 1432.
- charities, where one scheme settled for several, 1432.
- descended and devised realty, 1433.
- estate and settled fund, 1433.
- legacy and residue, 1433.
- real and personal estate, 1432.
- arbitrators, when ordered to pay, 297, 298.
- assignees in bankruptcy, of, 64, 160, 710, 1382, 1421, 1423 ; of defaulting administrator, 1428.
- disclaiming in foreclosure suit, 159, 160, 710.
- personal liability to, 64, 1421
- strangers, in suits with, 1882.
- assignor and assignees, one set of, when allowed between, 730, 1432.
- attachment of, 471 ; where not returned in due time, 467.
- attachment for, 1453, 1454.

(See ATTACHMENT.)

- Attorney-General, of, 11, 139, 140, 1436.
- charity cases, in, 1436.
- auctioneer, of, where a trustee, 1414.
- Bank of England, costs of, when thrown on particular legacy, 1431.
- bankrupt and assignees, one set of, when allowed between, 730, 1432.
- bar of the court, costs on bringing contemnor to, 508.
- bill of, 1444-1448, 1841, 1845.
 - account, suit for, does not lie in respect of, 1845.
 - addition to, or amendment of, when permitted, 1447.
 - contempt and scandal in, 854 n.
 - copy of, how obtained, 1445 ; charges for, 1445 n. ; form of, 1445, 1446.
 - time for delivery, 1446.
 - penalty for non-delivery, 1446.
 - unnecessary, not allowed, 1446.
 - delivery of, by solicitor, under summary jurisdiction, 1841.
 - one only allowed, where parties appear by same solicitor, 1448.
 - preparation and form of, 1444.
 - taxation of, 1444-1450.
 - two, when allowed, 1448.

(See TAXATION.)

- bill and answer, costs on dismissal at hearing on, 982.
- bill, original, when read after amendment on question of, 839.
- bill, printed, costs on not filing, 397.
 - costs of application for leave to file after time, 397.
 - written bill, costs of, 396 ; brief of bill, costs of, 877 n.
 - bill taken off file, as filed without authority, of, 807, 309.
 - bill taken off file because not signed by counsel, of, 312.
 - boundaries, costs of suits to settle, 1166.
 - briefs, of, 1440 n. ; where prematurely prepared, 1440 n.
 - cause, what are costs in the, 1378, 1379.
 - costs of appeals and rehearings not, unless specially directed, 1490.
 - costs of amendment of bill, when, 423.
 - costs of contempt, when, 433.
 - costs of exceptions, when, 774, 1490.

GENERAL INDEX.

[The references are to the star paging.]

COSTS — *continued.*

- costs of motion, when, 1378, 1600, 1602.
- good, when party began suit, on which, from change of circumstances ultimately unsuccessful, 1395 n.
- where plaintiff had ground to believe he had good cause of action, 1399 n.
- cause paper, costs of cause struck out of, 976, 984.
- cestui que trust* and trustees, one set of, where allowed between, 730, 1432.
- charge on estate, when declared to be, 1456.
- charity suit, costs, upon what principle taxed in, 15, 16, 1432, 1436.
- claimants, under decree, 437, 1212, 1428.
 - establishing claims, costs of, 1212, 1218.
 - under mortgagee in redemption suit, 260.
 - unsuccessful, costs occasioned by, 1218
- class, costs of members of, coming in under decree, 487, 1213, 1428.
- closing evidence, costs of application to enlarge time for, 890.
- collusive suit, of, committal for non-payment of, 1439.
- compromise, cause not heard on question of costs after, 795, 1880.
- concurrent jurisdiction, costs in cases of, 1404.
- concurrent suits, costs of, where stayed, 799.
- construction of will, of suit to ascertain, 1426–1431.
 - when other questions unnecessarily mixed up in suit, 1431.
- consultations with counsel, 1439, 1440 n.
- contempt, of, 472, 490, 491, 501, 507–509, 1455.
 - answer for want of payment or tender of, by defendant, 507, 508, 755, 785, 1455 ;
by plaintiff, where defendant not duly brought up, 490, 491.
 - acceptance of, not a waiver of contempt, 509.
 - costs in cause, when, 509.
 - filings answer without payment or tender of, irregular, 755, 785, 1455.
 - appearance, of defendant arrested for want of, 472.
 - attachment, where defendant arrested under, 507 n.
 - costs in cause, not in taxation between party and party, 510 n.
 - habeas corpus*, where contemnor brought up by, 508.
 - irregular contempt, payment of, 511.
 - messenger, where contemnor brought up by, 508.
 - pauper prisoner, of, 502.
 - payment of, out of Suitors' Fund, and reimbursement thereof, 502.
 - sergeant-at-arms, where contemnor brought up by, 508.
 - subpoena*, not recoverable by, 1455.
 - contempt for non-payment of, staying proceedings where defendant in, 796, 797.
 - contingent interest, of suit to secure, 1426, 1429.
 - contribution, direction for, 1218 ; now omitted, 1214.
 - conveyancing counsel of court, costs and fees of, 1329.
 - copies of documents produced to party, of, 1836.
 - copies of documents for counsel, of, 1439.
 - copies of printed documents, 1446 n.
 - counsel, costs and fees of, 1440 n.
 - advising on proceedings, of, 1439.
 - affidavits, of settlement by, when allowed, 901, 1429.
 - appeals on, 1484 n.
 - consultations of, 1489, 1440 n.
 - conveyancing counsel of the court, employed in addition to, 1329.
 - opinion of, when a just allowance, 1438.
 - payment of, 1238.
 - petition of, settlement by, 1439, 1605.
 - pleadings, of settlement of, by, 1439.
 - quantum of fees, 1440 n.
 - refreshers, 1440 n.
 - separate of, when allowed, 781.
 - two or more of, when allowed, 1439, 1440 n.
 - creditor claiming under decree of, 1212, 1423 n. ; taxation of, 1212, 1442.
 - creditor restrained from prosecuting action, of, 1617.
 - creditor, of suit by, 1422, 1424, 1438.
 - creditor's suit, plaintiff's costs taxed as between solicitor and client, when, 237 n., 1437 ; where no available assets, 1424.
 - contribution to, by satisfied creditors, 1213, 1214, 1424.
 - debt, costs of proof not added to, by, 1213.
 - extra costs, when allowed in, 1438.
 - single creditor, of suit by, 1422.
 - cross-bill unnecessarily filed by heir, of, 1384.

[The references are to the star paging.]

COSTS — *continued.*

- cross-bill, new party, 1548 n. (a).
Crown, costs of suits by or against, 12, 182, 1458.
damages, of new inquiry as to, 1142.
day, costs of the, amount of, 975.
 adjournment on payment of, 975.
 payment on, on neglect to give notice of enlargement of time for evidence or
 filing affidavits, 821, 889 n.
de bene esse, costs of examination, 941.
debtor to estate, of, set-off of, against his debtor, 1409.
debts, costs of proof of, 1212, 1218; taxation of, 1212, 1442.
deeds, costs arising on construction of, 1428 n.
defence, of needless, disallowed, 1394; of separate, when not allowed, 717, 718.
defendant, in same interest as plaintiff, of, 1407.
delivery up of securities, of suits for, 1386, 1387.
demurrer, on allowance of, 599; if partial, 599.
 with leave to amend, 598.
 reversed, where allowance of, 599.
demurrer, on overruling, 601; on reversal of overruling, 599.
demurrer *ore tenus*, on allowance of, 599; with leave to amend, 599.
demurrer, of, when not set down, 594.
demurrer by witness, of, 944.
depositions, of immaterial or irrelevant, 905.
directors of company, liability of, for, 147 n.
disclaimer, of defendant not putting in, in a proper case, 706.
disclaiming defendant, when allowed, 709, 1424 n.; when not, 710.
 when ordered to pay, 709.
 plaintiff, when entitled to be repaid, 710.
discovery, bill of, order for payment of costs of, 774, 810, 1457.
 costs due from defendant, where not set off against, 774, 1559.
 where it is a cross cause, 1458, 1555, 1559; costs of answer in, 1556.
 exceptions for insufficiency, costs of, set off against, 775, 1559.
discretionary with court, 1377.
dismissal of bill, on, in case of abatement, 812–814.
 bankruptcy, by, of plaintiff, 64, 814; of co-defendant, 814.
 death, by, of defendant, 813; of plaintiff, 812; of a co-plaintiff, 813.
 marriage of female sole plaintiff, on, 813.
dismissal, defendant when ordered to pay costs on, 1405 and n.
dismissal, apportionment of costs, in case of, 1408; where dismissal partial, 1407.
dismissal, when plaintiff allowed his costs on, 1404, 1405, 1427
dismissal of bill on plaintiff's own application, on, 790–794.
 appearance, before, 790; after, 790, 791.
co-plaintiff, by, 792.
dismissal with costs for non-prosecution against some defendants, after, 792.
pauper plaintiff, by, 42, 792, 808.
pauper defendant, against, 43, 44, 155.
repudiation of suit by plaintiff, in case of, 307.
unnecessary defendants, against, 301; without prejudice as to ultimate burden
 792.
dismissal of bill for want of prosecution on, in discretion of court, 807.
 merits of case not considered in deciding upon, 808.
abandoned notice of motion for, of, 807.
bankruptcy of defendant, on, 159, 808, 814.
company being wound up, when, 812.
costs which are included in order, 811.
due diligence, where plaintiff, has been used, 808.
infant's suit, in, 78, 79.
irregular notice of motion for, of, 805.
 notice of motion intercepted by step taken by plaintiff, of, 803–805.
pauper, where plaintiff a, 42, 792, 808.
taxation of, without special reference, 811.
dismissal of bill on payment of costs, and submission to plaintiff's demands, 794,
 1380.
creditor's suit, in, 286.
where several defendants, 794.
where discovery sought, 795.
dismissal of bill, without costs, on plaintiff's application after appearance, 791.
dismissal of bill, without costs, because defendant might have demurred, 315 n., 542,
 1394; or pleaded, 603, 1394.

[The references are to the star paging.]

COSTS — *continued.*

- dismissal of bill, without, on waiver of trial of question at law, 1404.
dismissal of bill, without prejudice to how costs should ultimately be borne, on plaintiff's application, 792.
dismissal of bill at hearing on bill and answer, 982.
dismissal of bill, taxation and recovery of, on, where no reference, 812, 1442.
distringas, of writs of, against corporation, 478.
double, 1434 n. (a).
dower, of suit to assign, 1166.
election, in cases of, 816–818.
enrolment of decree or order, 1028; of application for, 1020.
equally fair, when parties stand, 1894 n.
evidence, costs of, not allowed unless entered in decree or order, 1004.
cross causes, in, where both dismissed, 1555.
improper or unnecessary, where, 886, 1394.
new, of, on appeal motions or petitions, 1488.
taken abroad by commission or special examiner, 919.
evidence which is looked at on questions of, 1368.
exceptions for insufficiency of, 773, 774.
acceptance of further answer, not a waiver of right to, 774.
allowance, of, on, 773, 774; where partial, 774.
application for, when made, 774.
discovery, costs of bill of, when set off against, 774.
married woman, when defendant, a, 774.
overruling of, on, 774.
payment of, 774.
recovered, how, 774.
submission to, on, 766, 773, 1455.
third insufficient answer, after, 771.
exceptions for scandal, of, 352; when not duly set down, 858.
exceptions to Master's report, 1409 n.
execution of trusts, of suits for, 1411, 1412, 1432, 1433.
execution of writs of, 1439.
executor, of, 1382; of bankrupt, 1411 n.
not proving will, 1422; see personal representatives, *infra*.
proving will, when no personal estate, 1422.
expert, costs and fees of, 983, 1329, 1330.
fault, none against defendant not in, 1381 n.
none to plaintiff in fault, though his bill sustained, 1897 n.
no costs allowed to defendant in fault in one respect, though bill dismissed on other grounds, 1397 n.
both parties in fault, 1400 n.; or both innocent, 1400 n.
where each has claimed what he was not entitled to, and each has succeeded as to part, 1400 n.
foreclosure, of suit of, 1387; of motion to advance, 1601.
of disclaiming defendants to, 709, 710.
foreigner, by, 28 n.
foreign government may be ordered to pay, 20.
formal defendant, occasioned by appearance of, 432.
proceeded against by plaintiff in ordinary manner, of, 481.
former suit for same matter, staying proceedings on non-payment of, 39, 40, 796, 1457.
amount of costs must be first ascertained, 416.
dismissal of bill on final default, 796.
fraud, bill claiming on ground of, dismissed with costs, 1387, 1388, 1399.
groundless allegation, of, party introducing, must pay costs of, 1399.
fund in court, how paid out of, 1456.
fund, payment of, out of, when ordered, 1377, 1410–1433.
appeal from order for, when permitted, 1464.
rule in Massachusetts as to the amount to be allowed for fees of solicitors out of fund, 1434 n.
further consideration, costs usually disposed of, at hearing on, 1367.
gross sum, when directed to be paid for, 1379.
guardian of, 1360; on application for maintenance, 1360, 1431.
guardian *ad litem* of infant, of, 162 n., 177 n., 1457; when liable for, 168.
guardian *ad litem* of person of unsound mind, of, 162 n., 177 n., 1457.
defendant, when ordered to pay his guardian's costs, 177.
hearing of cause, costs of the suit only disposed of at, 791, 1376, 1380, 1410.
hearing, original costs usually not given at, 1376.

[The references are to the star paging.]

COSTS — *continued.*

- when given, include subsequent costs, unless excepted, 1368, 1376.
- heir, of, allowed usually, 1148, 1382 ; when he disclaims, 710.
- heir, when not allowed, 1148, 1382, 1388.
 - cross bill unnecessarily filed by, in case of, 1384.
 - insanity, where case of, unsuccessfully set up by, 1149, 1383, 1384.
 - perpetuate testimony in suit, to, 1383, 1384.
- heir, when given against, 1149, 1384, 1385.
 - refusal to convey under ancestor's contract, on, 1384.
 - spoliation, secreting, or vexatious contest of will, in case of, 1384.
 - unsuccessfully impeaching will as plaintiff, 1149, 1385.
 - secus*, when he could not proceed at law, 1385.
- heir, of, on issue, 1148, 1149, 1383.
- heir, of, taxed, on what principle, in administration suit, 1437.
 - in charity suits, 1383, 1436.
- husband and wife, of suits between, 1404.
 - one set of, allowed between, when, 730, 1404, 1432.
- impertinent matter, occasioned by, 349–351, 1395 n.
- affidavits, in, 895.
- answer, in, to amended bill, 776 ; further answer in, 775, 776.
- application for, when to be made, 350.
- Chambers, in proceedings at, 350.
- plea, in, 686.
- imprisonment for non-payment of, 505 n.
- incumbrancers, of, 1385, 1394 ; one set of, when allowed between, 1432 ; and see *infra*, mortgagees.
- infant, of suits on behalf of, 78–81.
 - next friend, when bill filed without, 68.
 - repudiation of suit, by infant, in case of, 79.
- infant's legacy, of suit for, 81, 1429.
- infant of, in partition suit, 1163 ; how raised, 1163 n.
- infant, when liable for costs, 169.
- informations, of, 10–16, 1458.
- injunction, of motion for, 1679.
 - intercepted by amendment, 424, 1602, 1671.
- injunction, of motion for dissolution of, 1379 ; of useless application for, 1679.
- inquiry as to heir, heir when allowed, 1203.
- inquiry into title, of, when purchaser entitled to, or ordered to pay, 1407, 1408.
- inquiry into title, purchaser's cost, of, how paid, 1408.
- interest on, when given, 1380.
- interlocutory proceedings, of, when costs in cause, 1378.
 - reservation of costs of, form of, 1379.
 - wrong judge, when made to, 1589.
- interpleader suit, of, 1569, 1570.
 - defendant may be ordered to pay directly to co-defendant, 1406, 1407, 1570.
 - lower scale, when applicable, 1570.
 - order for payment of, form of, 1406, 1407.
 - plaintiff's lien for, and how enforced, 1569.
- interpreters, of, 1440 n.
- interrogatories, of application for leave to file after time, 481.
- interrogatories, of, when allowed, though not filed, 486.
- issue, of, 1137, 1138, 1149, 1407 n.; see *infra*, "trial of question of fact."
 - occasioned by not proceeding to trial of, 1114, 1115.
- journeys, of, 1440 n.
- jurisdiction, upon dismissal for want of, 630 n.
- jury, special, summoned at instance of court, 1084 ; of parties, 1084.
- legacies charged on real estate, costs of suit to raise, when estate insufficient, 1425.
- legatee and incumbrancers, only allowed one set, when, 1432.
- legatees, of suits by, 1426, 1427, 1487.
 - plaintiff's costs, when taxed as between solicitor and client in, 1437.
 - where residue has been paid over, 1432.
- liability to, defendant not protected by disclaimer from discovery of facts showing, 707.
- liabilities of co-plaintiffs or co-defendants for, to solicitor, 1449.
- lien for, 79, 81, 1163, 1455, 1570 ; not lost by issue of attachment, 1455.
 - (See LIEN.)
- life, of tenant for, how raised, 1433.
 - of application for payment of income to, 1798.
- litigation, costs of, a just allowance, when, 1233, 1235.

[The references are to the star paging]

COSTS — *continued.*

- lunatic, costs of, in partition suit, how raised, 1162.
- married women, of suits on behalf of, 112, 118.
 - when leave given to apply for payment of costs out of estate of, 187.
 - partition suit, costs of, how raised, 1163.
- married woman continuing joint suit after death of husband, liable to, 113.
- mortgagee, costs of, 1235, n., 1385–1394.
 - administration suit, adopting, 1390, 1424.
 - insufficient estate, in case of, 1387.
 - possession, remaining in, after payment of principal and interest, 1393.
 - priorities of suit to ascertain, 1390, 1424.
 - sale, in cases of, 1390; where suit for administration also, 1390, 1424; in case of equitable mortgage, 1390.
 - trust of surplus property, in suit to execute, 1433.
- mortgagee, costs of, allowed usually, 1385 and n.; and of all persons claiming under him, 1386.
 - rule extends to both foreclosure and redemption suits, 1387.
 - extra, should be asked in bill and mentioned in decree, 327, 328, 1388.
 - inquiry as to, when directed, 327, 328.
- instances where allowed, defending title, incurred in, 1387, 1388; of taking out letters of administration, 1387, 1388.
- dismissal of bill in case of, except where great hardship, 1388.
- lunatic mortgagee, when, 1389.
- recovering mortgage property, incurred in, 1388.
- rules in Massachusetts, 1385 n.,
 - where suit to redeem without previous tender, 1385 n.
 - neglect to render a just and true account, 1385 n.
 - where account merely incorrect, 1385 n.
 - where neither party entitled, 1385 n.
 - unsupported claims made in good faith, 1392 n.
- mortgagee, costs of, when not allowed against estate, 1388–1390.
 - accounts, when not ready with, 1391.
 - adverse claims to mortgage, in case of, 1389.
 - assignment by mortgagee after decree, in case of, 1389.
 - insolvency of mortgagee after bill filed, in case of, 1389.
 - lunatic mortgagee, when, 1389.
- mortgagee, costs of, when disallowed, in case of misconduct, 1390, 1391 n., 1392, 1393 and notes; if positive, 1393.
 - mere claim of too much, or suggestion of doubt, not sufficient, 1392 n., 1393.
 - neglecting to furnish accounts on request, 1392 n.
 - unjust claim or defence, setting up, 1391.
- mortgagee, when ordered to pay costs, 1390–1398.
 - fraudulent foreclosure, insisting on, 1392.
 - loss of deeds, occasioning suit by, 1392.
 - tack, attempting to, 1392.
 - tender of principal and interest, refusing, 1391.
 - setting up an unconscientious defence, 1392 n.
 - improperly resisting claim to redeem, 1392 n.
 - between first and second mortgagee, 1392 n.
 - sub-mortgagee, 1392 n.
 - unsustained charge of fraud made by mortgagee, 1392 n.
 - making unfounded claim, 1393 n.
- mortgagor charging and not proving misconduct, 1392 n.
- Mortmain Act, when devise declared void under, 1429.
- motions, of, 1600, 1602.
 - abandoned, 1370, 1597, 1601.
 - application for, when made, 1601.
 - contemnor cannot apply for, 505.
 - dismissal for want of prosecution for, 807.
 - dismissal for non-prosecution, not obtainable after, 812.
 - payment of, necessary, before renewal of motion, 1380, 1602.
 - abatement of suit, in case of, 1602.
 - advance of foreclosure suit, for, 1601.
 - affidavit of service, when order taken on, 1600.
 - appearance of party served, but not interested, of, 1600.
 - of party not served, at request of applicant, 1600.
 - appearance by solicitor of deceased party, of, 1601.
 - costs in cause, when, 1878, 1879, 1600, 1602.
 - disability, on behalf of person under, where no next friend named, 1595.
 - Ex parte*, of, 1600.

[The references are to the star paging.]

COSTS — *continued.*

- infant, on behalf of, 79.
- injunction, for, when waived by amendment, 423, 424, 1602.
- intercepted, by step taken by other side, 1601.
- pro confesso*, to take bill, rendered inoperative, 522.
- receiver, for, when waived by amendment, 424, 1602.
- reservation of, 1601.
- separate motions which might have been joined, 1595.
- standing over till hearing of, 1379.
- successful, where motion partly, 1600.
- successful party, when ordered to pay, 1601.
- taxation of, without reference, when refused with costs, 1442, 1600.
- unperformed undertaking, of motion ordered to stand over, on, 1602.
- unsuccessful, 1600.
- ne exeat*, whether issued in cases of, 1699, 1700.
- new trial, of application for, 1189.
- next friend, costs of, in suits on behalf of infants, 76–82.
 - allowed, if he has acted *bona fide*, 80.
 - due diligence, not allowed costs of suit instituted without using, 80.
 - extra costs, when allowed, 82.
 - improper suit of, not allowed, 80.
 - liability of, to pay costs, 76.
 - mistake, not deprived of costs in consequence of, 80.
 - solicitor of, lien of, for, 80, 81, 1719.
- next friend, of person falsely alleged to be imbecile, ordered to pay, 86.
- next of kin, in charity cases, 1436.
 - coming in under decree, 438, 1213, 1428.
 - suit by, of, when residue exhausted, 1424.
 - unsuccessful, when not ordered to pay costs, 1427.
- nominal parties, 1407 n. (a).
- notice of the decree, of persons served with, 438 n., 437.
- novelty, in cases of, 1402 n.
 - practice of court unsettled, 1402 n.
 - whether party bound to know of case not in reports, 1402 n.
- observations in brief, of, 440 n.; on hearing of demurrer, 595 n.
- offer of terms which would have rendered suit unnecessary, after, 1394.
- officer of corporation joined for discovery, of, 145, 146.
- one set of, when allowed, 780, 1404, 1418, 1432; form of order for, 730, 731, 1482.
- opening biddings, of applicant, when outbid, 1291, 1292.
 - purchaser, former, 1291; special, costs incurred by him, 1291, 1292.
- order for payment of, form of, 1410; when payable by one defendant to another, 1407; in information, 16; in interpleader suits, 1407.
- amendment of order by addition of direction for payment, 1080.
- deceased persons, of, 1411.
- joint and several, 1448, 1449, 1458.
 - enforceable against survivors, notwithstanding abatement, 1448, 1449, 1458.
 - judgment, may be registered as a, 1033.
 - persons not parties should be specifically mentioned in, 1410.
 - without prejudice to ultimate liability, when expressed to be, 1409, 1433.
- parties, costs where objections taken, for want of, 290, 984.
- parties added by revivor, liability of, to costs, 1540.
- partition, of, suit for, 731 n., 1162, 1163.
 - defendant, when ordered to pay part of, 1163.
 - disability, how raised, when parties under, 1163.
 - lessee of share, of, 1163.
- party and party, taxation of, as between, 1434, 1435.
 - costs taxed as, unless otherwise directed, 1410.
 - (See TAXATION.)
- pauper, right of, to receive, 42, 155.
 - on dismissal of appeal against, 42.
 - on dismissal of bill against, 42, 43, 155.
 - on dismissal of bill by, 42.
- pauper, liability of for costs prior to admission as, 39, 155.
- payment of, by one party to another, 1381–1410.
 - as a general rule, prevailing party entitled to, 1381 n.
 - applies to whole costs of litigation, 1381 n.
 - settlement of suit out of court with arrangement of costs, 1381 n.
 - court may award costs to either party in its discretion, 1381 n.
 - not decreed in amicable suit, 1381 n.

[The references are to the star paging.]

COSTS — *continued.*

- nor against defendant in no fault, 1381 n.
- party who is brought before the court as a mere stakeholder is entitled to costs, 1381 n.
- so one against whom no decree can be had, 1381 n.
- payment of, how enforced, 1450–1458.
 - corporation aggregate, by, 1455.
 - out of fund in court, how effected, 1456.
 - privileged person, by, 1454.
 - proceedings to enforce, not stayed by appeal, 1467.
 - security for costs, in cases of, 33.
 - taxation, where no formal direction for, 812, 1442, 1601.
- payment of, where found in court, 1433; when directed without prejudice to ultimate liability, 1409, 1433.
- perpetuate testimony, of suit to, 941, 1458, 1574.
- personal representatives in administration suits, of 1411, 1421, 1422 and n.
 - creditor's suit, in single, 1422.
 - real estate, not allowed costs out of, though no personal estate, 1422.
 - secus, administrator ad litem*, 1422.
 - reviving suit, costs of, 1421; and see *infra*, trustees.
- petitions, of, 1610, 1611.
 - appearance of person uninterested, but served, of, 1610.
 - appearance without service, of, 1611.
 - payment out of court, for, 1798.
 - settlement of counsel, of, 1439, 1606.
 - taxation of, on dismissal, without formal reference, 1442.
 - two petitions for same object, of, 1611.
 - unsuccessful opposition, of, 1611.
 - petition, of application to file copy in place of original, 1610.
 - petition of right, on, 138.
- plea, on allowance of, 698; when plea has been amended, 704.
 - answer, when ordered to stand for, 701.
 - hearing, when benefit of saved to the, 699.
 - oppressively put in, when, 698.
 - overruling of, on, 701.
 - sufficient, without being set down, where plea, 696.
 - withdrawal of, on, 698.
- prayer for, 378, 1880 n.
- agent in fraudulent transaction, against, 298.
- effect of, on right to discovery, 707.
- priorities, of suit to ascertain, 1390, 1424.
- Probate, in Court of, postponed to costs in Chancery, 1411.
- production and inspection of documents, 1886.
- purchaser's, on discharge from purchase, 1291, 1292.
- purchaser's, of settlement of conveyance on sale, 1279 n.
 - appearance on application for payment out of purchase-money, of, 1372, 1373, 1610.
 - on inquiry into title, 1400, 1408; how paid, 1400, 1408.
- raising, by mortgage or sale of fund or estate, of, 1456; appeal because direction for, not inserted, 1457; receiver, of, 1411.
- abandoned proceedings, not allowed costs of, 1747.
- appointment of, costs of, 1740.
- discharge of, costs of, 1765.
- estate, when charged on, 1740, 1741.
- journeys, when allowed, 1747.
- motion for waived by amendment, of, 424, 1602.
- passing account, of, 1752.
- unsuccessful application against, of, 1747.
- receiver, of employment of, by trustee, when allowed, 1235.
- receiver, *pendente lite*, costs of suit for, 810, 811, 1728, 1756 n.
- rectification of settlement, of suit for, 1433.
- redemption suit, of, 1385 n., 1387.
- refreshers, 977 n., 1440 n.
- relator of, 14, 16; allowed, when, 16.
 - as between solicitor and client, 16.
 - extra costs, when allowed, 15, 16; out of what fund, 16.
 - liability of, to pay, 16.
- replication to disclaimer, costs occasioned by, 709.
- resale, on default of purchaser, 1285.

[The references are to the star paging.]

COSTS — *continued.*

- reservation of, by decree, when necessary, 1368.
- residuary legatee, of suit by, 1426, 1487.
- residuary legatees and incumbrances, are set off when allowed between, 1432.
- restoration of bill, not directed for purpose of raising question of, 809.
- result, costs generally follow, 1381.
- review, taxation of application to, 1450.
- reversionary interest, of suit to set aside sale of, 1886.
- revivor for costs not usually allowed, 1527, 1528.
 - exceptions to rule, 1528, 1529. (*See Revivor.*)
- sale, of, when just allowance, 1283.
- scales of, 1443, 1444.
- scandal, of, 365.
 - introduced by pauper, 42.
- second suit, of needless, 1394.
- second time, when cause set down, 976, 984.
- security for (*see Costs, SECURITY FOR.*)
- separate account, when fund paid to, or severed, 1431.
 - of application for payment out, when only applicant interested, 1611 n., 1798.
- separate sets of, 1894.
- sequestration, of, 478, 1061 ; for non-payment of, 1454.
- sequestrators, of, 1061.
- set-off, of, 1408 ; apportionment, after order for, 1409.
 - debtor, of, against his debt, 1409.
 - married woman, of, against amount due from husband, 1409.
 - in one suit not set off against costs in another suit, 1409.
 - right of, not lost by issue of attachment for costs, 1455.
- set aside settlement, of suit to, 1433.
- setting down cause, of, when struck out of paper, and again set do 976, 984.
- severed fund, when thrown on, 1431.
- short-hand writer's notes, of, 912 n., 1137 n., 1440 n.
- solicitor, when made payable to, 1410.
- solicitor appointed guardian *ad litem*, of, 162 n., 177, 1831, 1457.
- solicitor and client, when taxed as between, 1485–1487.
 - (*See TAXATION.*)
- solicitor, of, statutory power to charge on property recovered, 1846.
 - infant, does not extend to property of, 1847.
 - right to, not affected by failure of client's interest on his death, 1847.
- solicitor to Suitor's Fund, appointed guardian *ad litem* of infant, 162 n., 476 n. ; of person of unsound mind, 177 n., 476 n.
- specific performance, of suit for, 990, 1898, 1401 and n., 1402, 1407.
 - apportionment of costs in, 1408.
 - contrary decisions, in case of, 1401.
 - devise or settlement of vendor, of suit occasioned by, 1404.
 - doubtful till, in case of, 1401.
 - foolish, when both parties equally, 1400.
 - God, act of, of suit occasioned by, 1404.
 - inadequacy of price, of suit occasioned by, 1898.
 - misunderstanding, in case of, 1898.
 - reprehensible, when conduct of both parties equally, 1400.
 - result, generally follow, 1402, 1403.
 - although party acted under opinion of counsel, 1403.
 - successful party, when not allowed, 1397, 1404.
 - successful party, when ordered to pay, 1405.
 - time of showing good title, material on question, 990.
 - title, in case of question of, 1401, 1403.
 - vendor's representation, when suit caused by, 1399.
 - waiver of right to proceed at law in case of, 1405.
 - statutory jurisdiction, when application not made under, but by bill, 1849 n.
 - staying proceedings until payment of, in case of abandoned proceedings, 797, 1379, 1380 ; of second suit for same matter, 39, 40, 505 n., 796, 797, 811, 1453 n.
 - stay of proceedings, pending appeal, of application for, 1471.
 - staying proceedings on payment of costs, and submission to plaintiff's demand, 236, 794, 795.
 - creditor's suit in, 235, 236.
 - where discovery sought, 795.
 - where several defendants, 795.
 - stop order, of, applicant's right to, 1696.
 - subpoena for, 1451–1453.
 - (*See SUBPOENA FOR COSTS.*)

[The references are to the star paging.]

COSTS — *continued.*

- subsequent, included in costs at hearing, unless expressly excluded, 1368.
substitution of purchaser, on, 1285.
successful party, when not allowed, 1397-1402.
 contrary decision in case of, 1401, 1402.
dishonorable or improper conduct, on account of, 1397, 1398.
doubtful point of law, when in case of, 1399.
doubtful title, in case of, 1401; unless occasioned by party himself, 1401.
foolish conduct of both parties, in case of, 1400.
hardship, cases of, 1404.
laches, where guilty of, 1398.
misunderstanding, in cases of, 1398.
particeps criminis, when, 1397.
reprehensible conduct of both, 1400.
representation of party, where suit occasioned by, 1399.
specific performance suits, in, 1399.
unconscionable advantage, in case of, 1395.
successful party, when ordered to pay, 1405.
taxation of, 1434-1450.
- (See TAXATION.)
- tenant for life, of, application for payment of moneys to, 1798.
tenant for life, of, power to raise, 1433.
tender, where defendant has made sufficient, 1394, 1395 and n., 1396, 1403 n.
 account, in suits for, 1874.
conditions, must be without improper, 1396.
costs, actually incurred, must include, 1395.
demand, whole of plaintiff's, must include, 1395.
 legal, must be, 1396.
proved, must be, statement of in answer not sufficient, 1396.
refusal of, effect of, 1395.
 specific, must be, 1396.
tithe suits of, 1407.
transfer of cause, of motion for, 398.
traversing note, costs of taking off the file, 508.
trial of question of fact, of, 1148, 1388.
 application to fix day for, of, 1003 n.
different ways, where questions found, 1407.
heir, of, on, 1148, 1383.
mortgagee, when directed at instance of, 1393.
new trial, in case of, direction for, 1137, 1138, 1148, 1149.
trustees and personal representatives, of, 1401-1423.
 auctioneer, of, 1414.
balance found against him, in case of, 1396.
bankrupt of, 1411 n.
cestui que trust, when made defendants, by, 1406.
defaulting, of executors of, 1411 n.
disclaiming, or non-acting of, 1436.
fund, right to, out of, confined to suit with *cestui que trust*, 1421.
one set of costs, when allowed, and form of order, 729-731, 1413.
opinion of counsel, where he has acted on, 1411 n., 1418.
party and party, when taxed as between, 1485, 1486.
professional charges, not allowed unless specially authorized, 1413, 1414.
set-off of costs payable by, 1408, 1409.
severance of, in defence, when allowed, 730, 731, 1413.
solicitor acting for other parties, 1414.
solicitor and client, when taxed as between, 1435.
solicitor trustee, not allowed profit costs, 1414.
 secus, if specially authorized, 1414.
stop order, when made subject to, 1696.
stranger, liability to costs in suits with, 1381, 1382, 1421.
Trustee Relief Act, where application might have been made under, 1418.
unnecessary, must not burden fund with, 1413.
trustees, and personal representatives, when allowed costs, administration suits in,
 1411; direction of court, of suit instituted for, 1412.
direction for, when not added to decree or order, 1029.
slight breach of trust, in case of, 1416.
unsuccessful claim of, if made by way of submission, 1414.
trustees and personal representatives, when not allowed costs, 1415, 1416, 1419, 1420.
 claiming too much, 1415; *secus*, when claim honestly made, 1415.

[The references are to the star paging.]

COSTS — continued.

- delays and difficulties, where they have created, 1420.
- misconduct or neglect, in cases of, 1416, 1419, 1420.
- mistake, when suit occasioned by, 1420.
- misstating trust, 1415.
- severance, in defence, occasioned by improper, 780, 1413.
- unnecessary suit, instituting, 1412, 1413.
- vexatious conduct, in case of, 1412.
- where they litigate their own private interests, 1417 n.
- trustees and personal representatives, when ordered to pay costs, 1410-1419; form of order, 1421.
 - account, in case of neglect or refusal to, 1418, 1417.
 - appeal from order not permitted, 1465.
 - balances, keeping unnecessarily large, 1417.
 - breach of trust, in case of, 1416, 1417.
 - secus*, when amount small and promptly restored, 1416, 1420.
 - caprice, when suit occasioned by, 1416.
 - concealment of evidence, in case of, 1419.
 - confused accounts, where they have kept, 1419.
 - counsel, though acting under opinion of, 1411 n., 1418.
 - denial of assets, in case of, 1419.
 - dereliction of duty or misconduct, where suit occasioned by, 1406, 1416; *secus*, if motive not corrupt and no loss sustained, 1419.
 - falsification of answer, with fraudulent motive, in cases of, 1419.
 - gross negligence, though no misfeasance, in case of, 1418.
 - improper defence, setting up, 1415.
 - misconduct in course of suit, where guilty of, 1413 n., 1416 n., 1418.
 - as denial of assets, 1419.
 - concealment of evidence, 1419.
 - falsification of answer with fraudulent motive, 1419.
 - setting up unsubstantial objection, 1419.
 - misstating accounts, 1415.
 - obstinacy where suit occasioned by their, 1416.
 - possession of estate, keeping, 1417.
 - selling stock without authority, 1418.
 - separate estate paying wife's to husband, 1417.
 - unfair appraisement, making, 1417.
 - wrong person, paying fund to, 1418.
 - trustees and personal representatives where ordered to pay part of costs, 1420.
 - trustees and personal representatives, when no order made as to costs of, 1420.
 - trustees or *cestuis que trusts*, one set, when allowed between, 780, 1432.
 - unauthorized bill, of, and of motion, to take off the file, 309.
 - unfounded allegations, of, 1407.
 - widow, of, in suit for dower, 1166, 1167.
 - unsuccessful application, of, must be paid before it is renewed, 505.
 - witness, costs of demurrer or objection by, 944, 945.
 - production and oral examination of, at instance of court, 918.
 - production for cross-examination, 914.
 - of procuring attendance, 1489.

COSTS, SECURITY FOR,

- action at law, not required in case of bill to restrain, 20.
- alien, when required from, 53.
- ambassador's servant, from, 82.
- amendment of bill, when required after, 30.
- amount of security, when given by bond, 32, 83, 359.
 - when by payment into court, 34.
- answer, right to require security waived by filing of, 30.
- application for, must be made without delay, 30, 357, 358.
- bond, form and preparation of, 34, 85.
 - costs of all defendants should extend to, 34, 35.
- bond, how sued upon, 36.
- conduct of cause, from defendant who has obtained, 29.
- corporations, by, 27 n.
- costs, how recovered, when fund paid in, 36.
- cross-bill, cannot be required by original plaintiff, 28, 359, 1553.
- Declaration of Title Act, when required under, 1866.
- dismissal of bill on neglect to give, 85, 38, 797, 808.
- interpleader, suit in, 29, 32 n., 1571.
- jurisdiction, required from plaintiff or applicant out of, 28, 81.

[The references are to the star paging.]

COSTS, SECURITY FOR — *continued.*

- secus*, if military or naval officer abroad on public service, 28.
- or co-plaintiff within jurisdiction, 28.
- evidence on application, 29, 83.
- revivor by, on, 29, 1527.
- jurisdiction, required from plaintiff going out of, pending the suit, 31.
- limited company, when required from, 26 n.
- married woman, by, 111 n., 113 n., 187 n.
- material step in cause, a waiver of right to require security, 30.
- misdescription of plaintiff, when required on account of, 358.
- next friend of married woman, when required from, 111, 113.
- on his retirement, 111.
- next friend of infant, required from retiring, 76.
- non-resident, by, 154 n.
- order for, how obtained, 83; form and service of, 83.
- discharge of, 86.
- pauper, not required from, 37.
- peer, resident abroad, security must be given by, 28.
- permanent residence, required from plaintiff or applicant without a, 27.
- petitioner, when required from, 28, 31, 1605.
- plaintiff, on striking out name of, 404.
- plaintiff, when required to give, 26 n., 358.
- relator, when required from, 16 n.
- security, how given, 33, 34.
- stay of proceedings till security given, 27, 36, 39, 40, 505 n.
- sureties, who may be, 35.
- bankruptcy or death of, proceedings on, 84.
- costs of inquiry, as to, 35.
- number of, 35.
- objected to, how, 35.
- time for giving, 30 n., 32 n.
- not reckoned in time for answer or defence, 36, 489, 740.
- waiver of right to require, what is, 30.

COSTS, CHARGES, AND EXPENSES, 1438–1440.

- accounting party, of, not to be included in his account, 1281, 1233.
- collusive bill dismissed with, 1439.
- evasive answer, taken off file with, 785, 1439.
- four insufficient answers, after, discharge ordered on payment of, 773, 1438.
- just allowances, when allowed as, 1233.
- next friend of infant, when allowed, 1233.
- purchaser, of, on discharge from sale, 1291, 1292.
- relators, when allowed, 15.
- trustees, when allowed, 1235, 1438.

COUNSEL,

- absence of, new trial at law on ground of, 1131.
- appeals to House of Lords, number heard and allowed in, 1501.
- authority of, to consent, 974.
- briefs of (*see BRIEFS.*)
- cases for opinion of, how far privileged, 511–578, 1834.
- certificate of, on appeals in Court of Chancery, 1478; one counsel, of, when permitted, 1479; credit given to, 1475, 1478.
- motion, not required where appeal from order made on, 1487, 1603.
- petition, on appeal from order on, 1612.
- appeals to House of Lords on, 1494.
- information on, 899; on amended information, 422.
- certificate of, for hearing as, short cause, 972; on further consideration, 1371, 1372; on motion for decree, 825.
- pauper, on application to be admitted to sue as, 41; to appeal as, 1482.
- petition under Sir Samuel Romilly's Act, on, 1855.
- settlement on marriage does not affect fund, that, 95.
- certificate of, that further time is required for settling answer, 742.
- communications to, privileged, 576, 1882, 1838.
- compromise by, 974 n.
- conveyancing, 1828–1840.

(*See CONVEYANCING COUNSEL.*)

- costs and fees of, 1439, 1440, 1440 n., 1605, 1608 n.
- affidavits of settlement of, by, 901, 1439.
- conveyancing counsel of court, when employed in addition to, 1329.

[The references are to the star paging.]

COUNSEL—*continued.*

- petitions, of settlement of, by, 1489, 1605.
- separate, for parties jointly interested, 731.
- two or more, 1440 and n.
- disclaimer by, at bar, in suit, 706 n.; on petition, 706 n.
- fees, not imposed as a punishment, 508 n.
- indorsement on brief of order of court, not privileged, 572, 1834.
- order, when drawn up from, 980 n., 1008 n.
- opinion of, how far privileged, 571, 572, 1888, 1834.
- costs of, when a just allowance, 1233.
- person ordered to pay costs though acting under, 1403, 1411 n., 1418.
- pauper, may not refuse to act if assigned to, 41.
- pauper prisoner, assignment of, to, when brought for want of answer, 500.
- perusal of pleadings by, before signature, 313.
- answer, of, 313, 733; bill, of, 313; plea, of, 685.
- separate, 781 and n.
- signature of, to answer, 738; how affixed, 733.
- proceedings, when omitted, 733, 783.
- answer, to separate, of co-defendants, 782 n.
- bill to, 311, 312, 313; how affixed, 312; how added, if omitted, 312 n., 399.
- objection for want of, how taken, 312, 399, 562.
- bill, to amended, 312, 422; not required, when amendment merely clerical, 313 n., 410 n.
- demurrer, to, 590.
- disclaimer, to, 708.
- examination after third insufficient answer, not required to, 772 n.
- exceptions, to, 763; how affixed, 764.
- forgery of, how punished, 812.
- information to, 311 n., to amended information, 422.
- interrogatories for examination of parties to, 482 n., 1554; of witness, 1195.
- minutes to, 972 n.; when required, 1014.
- petition to, when necessary, 1478, 1605.
- to plea, 685; omission of, how rectified, 686.
- Suitors' Fund, to, usually assigned to prisoners in contempt, 508 and n.

COUNTIES,

- division of England into, judicially noticed, 546.

COUNTY,

- process made out into what, it should, 462.
- warrant of sheriff may not be executed out of, 467.

COUNTY PALATINE,

- attachment into, direction of, 463; return of, how enforced, 463, 471.
- Court of, course of proceedings in, judicially noticed, 546.
- office copy of record of, provable under order, as exhibit, 882.
- Court of Equity of, demurrer on the ground that it is the proper tribunal, 554; plea on the same ground, 628.

COURSE (ORDER OF). (*See ORDER or COURSE.*)

COURT,

- act of the, dismissal of bill without costs on plaintiff's application, when he was misled by, 791.
- branch of, marking bill for, 889, 397; effect of, 398.
- omission of, how rectified, 397 n.
- marking notice of motion, not in cause for, 1588, 1595.
- marking petition not in cause for, 1588, 1595.
- costs of application made to wrong branch of court, 1589.
- order made by wrong branch of court, effect of, 1589.
- papers for use of, at hearing of cause, 977; penalty on neglect to deliver, 978.
- demurrer, at hearing of, 595.
- exceptions for insufficiency, at hearing of, 768.
- to second or third answer, 769.
- further consideration, at hearing on, 1373.
- further hearing after trial, at, 1147.
- motion for decree, at hearing on, 825.
- plea, at hearing of, 693.
- trial of question of fact, at, 1087.
- queen may sue in any, 5.

COURTS AT WESTMINSTER (SUPERIOR),

- judicial notice taken of course of proceeding in, 546.

[The references are to the star paging.]

COURTS AT WESTMINSTER (SUPERIOR) — continued.
office copy of record, in, provable at hearing, as exhibit, 882.
signature of judge, judicially noticed, 866.

COURT (INN OF). See (INN OF COURT.)

COURT OF CHANCERY (OFFICER OF). (See OFFICER OF THE COURT OF CHANCERY.)

COURT OF COMPETENT JURISDICTION (OFFICER OF). (See OFFICER OF COURT OF COMPETENT JURISDICTION.)

COURTS OF GENERAL JURISDICTION,
jurisdiction of, nothing intended to be out of, unless shown and alleged so to be, 554, 555, 629.
proceedings in, course of, judicially noticed, 546.

COVENANT,

arbitration, to refer to, cannot be pleaded, 670.
but proceedings may be stayed, 670, 1861.
breach of, when restrained, 1653-1657.
demur, not to, discovery must be given, in case of, 565.
enforceable, though not running with land, 1654.
forfeiture on breach of, when relieved by injunction, 1757-1760.
negative, 1654 n. (a).
production for, discovery when not compelled, in cases of, 1826.
waiver of breach of, 887 n.

COVENEREE,
when necessary party, 194.

COVERTURE,

disability arising from, in case of plaintiff, 90; of defendant, 180, 178.
effect of, at Law and in Equity, 89, 90.
plea of, of defendant's, 631; of plaintiff's, 630.
woman denying, allowed to defend separately, 182.

"CRAVE LEAVE TO REFER,"

effect of expression in pleadings, 725, 838; on right to production, 1832, 1833.

CREDITORS,

abatement of suit by, proceedings in case of, 1170, 1522.
absence beyond seas of, not a disability within statute of limitations, 648.
action by, when restrained after administration decree, 1614-1618.
application, on whose, 1615, 1616.
assets (state of), must be shown, unless suit by legatee, 1617.
costs of restrained creditor, 1617.
creditor's debt must be provable at once under, 1615.
default, effect of allowing judgment to go by, 1616.
execution, not restrained, if judgment prior to decree, 1615.
false plea, effect of, 1616.
foreign court, in, 1615.
garnishee order, creditor not restrained from obtaining, 1615, 1616.
injunction, writ of, usually not issued, 1618.
inquiry as to creditor's claim, when directed, 1617.
plene administravit, after plea of, 1616.
riens per descent, after plea of, 1616.
summons, after order on, 1616.
action by, restrained after order for account of debts and liabilities, 1616.
not restrained after mere order for preliminary accounts and inquiries, 1616.
action by, when restrained, after decree in County Court, 1615 n.
advertisement for, 1203, 1204.
affidavit to claims by, 1222.
answer to bill by, 726 n.
appeal by, 1461.
bankrupt of, cannot sue for property vested in his assignees, 59.
bankrupt testator, of, cannot sue assignees together with executors, 323.
Master, what proceedings before, attended by, 1173.
claims, proof of by, under decree, 1209-1214; payment of, 1806, 1807.
(See CLAIMS, UNDER DECREE. DEBTS.)

class suit on behalf of, 285, 237.

conduct of, 236 n., 287 n.

costs 237 n.

description of plaintiff in, 360.

deceased person, by creditors of, 235, 237.

[The references are to the star paging.]

CREDITORS — continued.

- dismissal of, before decree, 236, 244.
- separate creditor of, form on behalf of joint and separate creditors, 237.
- trust deed for payment of debts by creditors under, 237.
- concurrent administration suit by, plea of pendency of, 635.
- concurrent administration suits by, staying of, 635.
- conduct, suit of, change of, 1169.
- contribution by, to costs of suit, 1213.
- co-plaintiffs, where they may be, 285, 308 n.
- costs of, where claiming under decree, 1212-1214, 1442.
- costs of suit by, 1422, 1425, 1437, 1438, 1442; where no assets, 1423, 1424.
(See Costs.)
- death of one, not an abatement in suit by several, 1538.
- deceased person of, when they may sue debtor to estate, 200, 249, 324.
- deceased partner, of, parties to suit by, 323.
- decree, upon bill by, 991 n., 2274 n.
- foreign, entitled to dividends, 202 n.
- imprisonment of, not a disability within statute of limitations, 648.
- inheritance, owner of, necessary party to administration suit by, 262.
- insolvent, of, may sue executor of assignee, when, 160.
- limitations (statute of), set up by, on proceedings under decree, 643.
executors, in creditor's suit, not bound to plead, 643.
creditor coming in cannot set up, against plaintiff on whose
claim the decree is based, 1210 n.
- marshal assets, parties to suit to, by, 237.
- parties, when necessary, to suits for execution of trusts for benefit of, 224 n., 225,
236 n., 258, 276; not necessary, if for execution of trusts of surplus, 257.
- parties to suit by, where deceased debtor in partnership, 324.
- parties to administration suit, when made, 200.
- payment of debt of, when estate insufficient, 1214.
- plaintiff must prove his debt under decree, 1209.
- proof of debt under decree necessary in suit by, 1209.
- quasi parties, become, after proof under decree, 635.
- real estate, must sue on behalf of others in suit for administration of, 336, 360.
amendment of single creditor's bill, when allowed, 236 n., 360 n.
- receiver, when appointed, in suits by, 1720.
- refunding by, where assets insufficient for payment of costs, 1214, 1424.
- residuary legatee, of, cannot sue executor of testator, 323.
- revivor of suit of, ordered, at whose instance, 1170, 1522, 1540 n.
when not necessary, 1538.
- separate, may sue on behalf of selves and joint creditors, 237.
- single, suit by, account taken in, not binding on other parties, 1207.
costs of, 1422; form of decree in, 236 n.
- specific assets of testator, person possessing, when party to build by, 324.
- suit on behalf of selves and of several others, when permitted, 285, 287.
description of plaintiffs in, 360.
- dismissal of, before decree, on payment of debt and costs, 236, 244.
- issue *devisavit vel non*, not directed in, 1075.
- creditor coming in under decree may contest the validity of the claim of any
other creditor, 1210 n.

CREW,

- when one of ship's may sue on behalf of himself and others, 239.

CRIMINAL ACT,

- injunction not generally granted to restrain, 1620 n.
- plea that plaintiff's title is derived from, 57.

CRIMINAL CHARGE,

- objection on ground that production would expose party to, 563 and n., 1835.

CRIMINAL MATTERS,

- privileged communications, 578 n.
- proceedings in, not restrained, 1620; unless plaintiffs are thereby seeking redress,
1620.

CRIMINAL PROSECUTION,

- demurrer, on the ground that discovery would expose defendant to, 563; exceptions,
566, 567.

by witness, on the ground that evidence would expose him to, 942.

objection on ground that production would expose party to, 879.

right to protection from discovery leading to, cannot be waived by agreement, 566

[The references are to the star paging.]

CRIMINAL PROSECUTION — *continued*.

secondary evidence, when production of original would expose party to, 879.
wife not bound to discover what would expose husband to, 184, 563, 564.

CROSS-BILL, 1548-1556.

auxiliary suit, 1548 n.; necessary for affirmative relief, 711 n., 1550 n.
sustained only on matter of original bill, 1548 n.
new parties cannot be introduced by, 1548 n.
purchaser *pendente lite*, 1548 n.
need not refer to original suit, 1548 n.
time when, should be filed, 1548 n.; delay to be accounted for, 1548 n.
adjournment of hearing in case of, 976.
admission in answer not controverted by, 782.
advance of, 975, 1553.
affirmative relief upon, 1548 n. (a).
answer to, 1551, 1552.

(See ANSWER.)

rule respecting, in United States courts, 1551 n.
contempt in original suit not waived by filing, 510.
costs, 1548 n. (a).
cross-examination, when original suit heard on motion for decree, 824.
defendants, relief between, 1551 n. (a).
defensive, 1548 n. (a).
demurrer to, 1549 n.
dismissal of, by dismissal of original bill, when not of course, 1553.
evidence in, 823, 868, 871, 974, 1554, 1556
closing of evidence in original suit, after, 1552.
enlarging time for, 976, 1551.
costs of, where both causes dismissed, 1556.
motion for decree, when cause heard on, 824.
order to read, in each cause, evidence taken in the other, 868, 975, 1552; available by opposite party, 871, 1553.
foreign sovereign or government, may be filed against, 19 n., 141 n.
form of, 1549.
how and by whom prepared, 1549 n.
brought in same court, 1549 n., 1553.
no decree in, on new and distinct matters, 1549 n.
the issues may be different, 1549 n.
defence, 1549 and n.; want of equity not an answer to, 1549 and n.
equitable relief only can be sought by its, 1549 n.
when directed to be filed at hearing of original cause, 1550.
by one defendant against co-defendant, 1550 n.
where plaintiff in bill to redeem, has, after answer, assigned all his interest, 1550 n.
answer made cross-bill in Mississippi and Tennessee, 1550 n.
hearing, direction to file, when given at, 1550.
infant's, amendment of, not allowed after dismissal, 174.
interpleader suit, in, 1561 n. (a).
leave of court not required for, 1548 n. (a).
necessary, when, 1548; when not, 1550, 1551 n., 1555.
should not be brought for relief that may be had in original suit, 1551 n., 1555 n.
may be brought to obtain equitable set-off, 1551 n.
pendency of, when not an answer to motion to dismiss for non-prosecution, 1556.
plea of pending suit, does not lie to, 636.
plea *puis darrein continuance*, effect of, obtained by, 607, 1550 n.
priority of original suit over, 1550.
lost by amendment of original bill, 403, 1552.
by neglect to file interrogatories, 481, 1552.
production of documents, obtainable without, 1555, 1819.
purchase for valuable consideration without notice, not good ground for filing, 674 n.
security for costs, when required in, 28, 359, 1553.
setting down, 975, 1553.
specific performance, where decreed at instance of defendant, without, 380 n., 385, 1551.
staying proceedings for answer, 1552 and n.
staying original cause, 1552 n.
taken as confessed, 1553 n.
question determined in hearing on bill, cannot be reheard on cross-bill, 1553 n.

[The references are to the star paging.]

CROSS-BILL — continued.

subpœna to hear judgment, service of, in, 975.
substituted service of, not allowed, 447.
United States courts, in, 313 n.
venue, 1558 n. (a).

CROSS-BILLS OF DISCOVERY.

now of rare occurrence, 1553; costs of, 1458, 1555, 1558, 1559.

CROSS-EXAMINATION,

accounting party, of, 1180 n.
affidavits, on, 888, 913.
amend, on application for leave to, 415 n.
Chambers, used in, 1039.
claim, in support of, 1189, 1190, 1191.
documents of, none on, 888, 1823.
injunction, on application for, 1670.
motion, used on, 1599; how taken, 1599.
aged witness of, how taken, 910.
answer, on, when permitted, on motion, for decree, 822, 823; for injunction, 1670.
answer as to documents, no cross-examination on, 1823.
attendance of witness for, how compelled, 914.
character of witness, impeaching on, 1104.
cross suits, in, where issue joined in one, and motion for decree in other, 824. -
defendant's witnesses, by co-defendant, 919, 2130 n.
examiner, before, how conducted, 904.
ex parte examination, on, 913.
hearing of cause, at, 888, 904, 981.
infirm witness, of, how taken, 910.
issue joined, after, taken before court at hearing, 888, 904.
unless before examiner by consent, or by direction of court, 904.
jurisdiction, of witness out of, how taken, 910.
motion for decree, on, 822, 823.
time for notice to produce for, 823, 914, 915.
how taken, 824, 914; time for, 824.
non-production of witness for, effect of, 914.
notice of, to other parties, 915.
notice to produce witness for, 890, 913.
time for giving, 913; enlargement of, how obtained, 914.
expenses occasioned by, 914.
opponent, of, 1099 n.
previous written statements as to, 1102.
production by plaintiff, when ordered for the purposes of, 1820.
subpœna to attend for, time for, 890.
trial of question of fact on, 1102.

CROWN,

account, suit for, by, when instituted, 7.
Attorney-General sues on behalf of, 7, 10 n.
costs in suits by and against, 11, 132, 1458.
forfeiture, waiver of, 387 n.
grants by, Attorney-General when necessary party to suit by claimant under, 135, 136.
interpleader against, 1567.
payment to, form of order for, 1800.
relators, when named in suit on behalf of, 11.
suit on behalf of, how commenced, 2.
(See ATTORNEY-GENERAL. INFORMATION QUEEN. RIGHT, PETITION OF.)

CUSTODY,

answer, proceedings to detain defendant in, till, 491, 492, 493.
do not prejudice right to take bill *pro confesso*, 492.
mitigated, when permitted, after order for committal, 772.
pro confesso, proceedings to take bill against defendant in, under statute, 497; under general orders, 522.
pauper, when a, 502.
pro confesso order, submission to, by defendant in, proceedings upon, 525.

CUSTOM,

evidence of, 860, 861.
inheritance, owner of, a necessary party to suit to establish, 262.

CUSTOM OF THE COUNTRY,

cultivation by tenant contrary to, restrained, 1655.

[The references are to the star paging.]

DAMAGES,

appeal from order directing assessment of, 1082.
assessment of, in Court of Chancery, 1080-1110.
before court itself, 1082-1110.

(See FACT, QUESTION OF.)

by inquiry, at Chambers, 1082.

by writ of inquiry at assizes, *Nisi Prius*, or before sheriff, 1040-1042.

(See INQUIRY, WRIT OF.)

assessment of, on discharge of *ne ereat*, 1714.

costs of new inquiry, as to 1142.

discharge of sequestration, after, 1059.

election, plaintiff not put to, because after suit he has commenced action for damages, 1082.

excessive, new trial at law on ground of 1129.

instead of specific performance, 1080 n., 1081 and n.

instead of mandatory injunction, 1080 n., 2038 n.

in case of ancient lights, 1080 n.

legal right in cases of, 1641 n.

ne ereat regno, on discharge of writ of, 1714.

patent cases, 1080 n., 1081 n.

special damage must be shown, 1082.

specific performance suits, in, 1080 n.

payment into court in respect of, 1082.

prayer for general relief, under, 878 n.

security for payment of, when required on motion for injunction, 1672.

smallness of, new trial at law on ground of, 1130.

specific performance, in suit for, 1082 n.

undertaking as to, 28 n., 1666, 1672, 1708; assessment of damages on, 1666 n.

(See UNDERTAKING AS TO DAMAGES.)

DATES,

affidavits, in, how expressed, 895.

in answers, 743; in bills, 396; in interrogatories, 482 n.

DAY (COSTS OF),

adjournment on payment of, 975; amount of, 975.

where abatement or compromise of suit not entered in cause book, 977.

DAY TO SHOW CAUSE,

effect of giving infant, 171.

infant defendant, when given, formerly, 165.

infant defendant, now given, in case of legal foreclosure, 167.

must be in final order, as well as original decree, 167.

not given, where conveyance required from infant, 166.

where sale directed instead of foreclosure, 167.

where absolute foreclosure decree made at the hearing, 168.

infant plaintiff, when given, 73; how cause shown by him, 73.

omission to give infant defendant, when error in the decree, 165.

DE NOVO,

leave to plead, when given, 703, 704.

DEAF, DUMB, AND BLIND PERSON,

payment out, form of order for, in case of, 1798.

DEAF, OR DEAF AND DUMB PERSON,

affidavit of, how taken, 897; answer of, how taken, 747.

DEAN,

when suit by, should be revived by his successor, 23.

DEAN AND CHAPTER,

record from registry of, provable as exhibit at hearing, 882.

DEATH,

co-defendant, of, dismissal for want of prosecution, 810.

committee of lunatic, of, proceedings on, 176.

contemnor, of, effect of, on sequestration, 1059.

co-plaintiff, of, who entitled to revive on, 1538; service of order, 1538.

dismissal for non-prosecution, after, 810.

revivor by common order, on, 1509, 1520 n., 1526.

tenant in tail, supplemental order, on, 1520 n.

corporation sole, of, an abatement, 23.

who entitled to revive on, 23, 1528.

[The references are to the star paging.]

DEATH—continued.

defective evidence, of, how remedied, 857.
 defendant, of, abatement on, 1508, 1513, 1520 n.; when none, 1511; revivor of, 1541; before appearance, 1522.
 motion for revivor or dismissal, on, 818, 814.
 defendant to information, of, may be an abatement, 18, 14.
 deponent, of, effect of, on his affidavit or deposition, 891.
 examiner, of, effect of, 910.
 formal defendant, proceedings on, 429.
 guardian of infant, of, 1853.
 guardian *ad litem*, of, proceedings on, of infant, 168; of person of weak mind, 176.
 husband and wife, of, in joint suit, who entitled to revive on, 114.
 husband defendant, of, when not an abatement, 188.
 effect of, as to widow's answer, 188.
 husband, of, after order for settlement, effect of, 107.
 before revivor, effect of, 118.
 effect of, on joint suit, 114.
 joint tenant, of, continuation of suit after, 1511 n.
 judgment of death, effect of, 53; for treason or felony, 53.
 manager, of, provision in case of, 1769.
 married woman defendant, of, an abatement, 188.
 next friend of infant, of, proceedings on, 77.
 next friend of married woman, of, proceedings on, 112, 118.
 next of kin, of, where a co-plaintiff, revivor on, 1527.
 obligor in bond to secure costs, of, effect of, 84.
 party, of, abatement of suit on, 1507; when no abatement, 1511 and n.
 a total determination of the suit, when, 1513, 1542.
 personal representative, of, when revivor not necessary, 1511 n.
 plaintiff, of, an abatement, 1507, 1520 n.; when not, 1511.
 before decree, who entitled to revive, 1537.
 creditor's suit, in, who entitled to revive, 1511 n., 1522.
 discharge of defendant in custody for contempt, on, 511.
 motion for revivor on in default dismissal, on, if before decree, 812.
 plea of, 830.
 proceedings upon, when a total determination of interest, 1542.
 tenant in tail, without issue, supplemental order, on, 1520 n.
 plaintiff in issue, new trial not directed on ground of, 1123.
 presumption of payment, and when ordered on, 1795 n.
 public officer, of, not an abatement, 25 n., 813; dismissal of bill after, 813, continuance of suit upon, 25 n.
 receiver, of, passing account after, 1757.
 relator, of, proceedings on, 18.
 residuary legatee, of, a co-plaintiff, revivor not necessary, 1527.
 tenant in tail, plaintiff or defendant, effect of, and proceedings on, 229, 286.
 trustee, of, when revivor not necessary, 1511 n.
 wife, of, effect of on joint suit, 114.
 witness, of, order to use evidence taken *de bene esse*, 939, 940.

DE BENE ESSE (EXAMINATION), 932-942.

abroad, where witness about to go, 933, 935; order for, is of course, 936.
 aged witness, in case of, 933, 935; order for, is of course, 936, 937.
 allowed, when, 938.
 whenever required by justice of case, 935.
 not allowed, where more than one witness to same fact, 936.
 when witness might be detained, 935.
 when commission for examination abroad prayed, 888.
 appeal, at hearing of, 1487.
 benefit of, lost, unless diligence used to examine in chief, 938.
 chain of evidence, when death of witness would destroy, 935.
 closing evidence, not allowed after, 984; except after trial of issue, 934.
 contempt, when defendant in 936; order made without notice, 936.
 costs of, 941; where bill successfully demurred to, 941.
 dangerous illness, where witness afflicted with, 933, 935; order for, is of course, 936.
 defendant entitled to order for, 936.
 depositions taken, only used to supply place of examination in chief, 940.
 depositions, order to use, necessary, 937.
 application for, how and when made, 940.
 death of witness, in case of, 940; where no strict proof of, 939; necessary, and where made, 938, 930.

[The references are to the star paging.]

DE BENE ESSE (EXAMINATION) — continued.

- issue, when admitted at trial of, 1117, 1118.
- filings of depositions, 938.
- impossibility of obtaining evidence in the usual way, in case of, 939.
- incidental to every suit, 938.
- irregularity in depositions or order, how taken advantage of, 941.
- Law, order for production of depositions on trial at, when made, 984.
when evidence of witness required at, 938, 939.
- manner of taking, 938.
- notice of examination, 937; contents of, and time for giving, 938.
- office copy of depositions, when made, 938 n.
- order for, 938–938.
 - affidavit in support of application, 987.
 - course, of, when made as of, 936, 937.
 - defendant's special application before answer, granted on, 936.
 - filings of bill, may be obtained on, 936.
 - form of, 938.
 - irregular order of course, discharge of, 937.
 - notice, when made on motion with, 936.
service of, 938.
 - origin of practice, 982.
 - perpetuate testimony, in suit to, 934.
 - practice in United States courts, 983 n.
in Illinois, 938 n.
 - sole witness to important fact, in case of, 938, 935.
evidence on application, 936, 937.
order for, not of course, 936.

DEBTOR,

- joint, out of jurisdiction not a necessary party, 271; to suit against co-debtor, 150.
- jurisdiction, out of, statute of limitations, when applicable to, 648.
- suit against, by person interested, when permitted, 200, 249, 328.

DEBTS,

- account of, how taken under decree, 1200 *et seq.*
(See MASTER'S OFFICE.)
 - costs of proof, 1212; insufficient estate, in case of, 1213.
 - decree for payment of, when a bar to statute of limitations, 643, 1210, 1211.
 - deed for payment of, one creditor may sue for self and others, 237.
 - heir, when necessary party to suit to execute trusts of, 231.
 - devise for payment of, effect of, 642.
 - devise subject to, when devisee represents *cestui que trust*, 228.
 - dividends in bankruptcy treated as payments on account, 1260.
 - filings bill for payment of, a bar to the statute of limitations, 643.
 - interest on, allowed, at what rates, 1253–1260.
(See INTEREST OF MONEY.)
 - married woman, due to, effect of husband's release of, 122, 123.
 - plaintiff's, must be proved under decree in creditor's suit, 1209.
 - plea of statute of limitations to bill for payment of, 640.
 - proof of, in administration suit, not an election not to sue at law, 817.
 - revival of, by advertisements, 642; by proof of creditor's will by debtor, 643.
 - separate estate of married woman, when charged with, 186.
 - trust for payment of, when a bar to statute of limitations, 642.
 - trustees for payment of, may sue without creditors, 224.

DECEPTION,

- enrolment of decree or order vacated for, when, 1026, 1027.

DECLARATION OF RIGHTS,

- further consideration, usually made at hearing on, 1367.
- future, 2181 n., 2182 in n.
- petition, not made on, 1808.

DECLARATION OF TITLE ACT, 1862, 1864–1873.

- abatement of proceedings, under, none on death or change of interest, 1872.
- affidavit as to documents, 1866.
- appeal from order under, to Appeal Court, in Chancery, 1868, 1871.
to House of Lords, 1868.
- application to court, under, how made, 1864.
- recall or variation of declaration for, 1871.

[The references are to the star paging.]

DECLARATION OF TITLE ACT — *continued.*

- restraint on alienation pending, 1871.
- certificate of title under, 1868, 1869.
- cancellation of, and issue of several, 1869.
- duplicate, when issued, 1870.
- production of deeds on issue of, 1869.
- separate, issue of, 1869.
- substitution of, 1869.
- claims, rights and matters not affected by certificate, 1870.
- construction of terms in Act, 1873.
- costs of proceedings under, 1871.
- declaration, order absolute for, 1867 ; effect of, 1869.
- declaration, order *nisi* for, 1865.
- deposit of copy of order *nisi*, 1866 ; contents of copy, 1866.
- advertisement of deposit, 1867.
- disability, person under, provision as to, 1871, 1872.
- discovery, not prevented by, 1873.
- fraud, effect of declaration obtained by, 1873.
- identity of parcels, proof of, 1865.
- informality, declaration of title not to be set aside for, 1868.
- investigation of title, 1865.
- map, when required, 1865.
- married women, provision as to, 1871.
- notice of order *nisi*, 1866.
- opposition to declaration, how made, 1867 ; order made thereon, 1867.
- petition, contents and form of, 1864.
- recall or variation of declaration, 1870, 1871.
- register of titles to be kept, 1872.
- registration under Land Transfer Act of declaration, 1865 n., 1868.
- effect of registration, 1870.
- security for costs, when required, 1866.
- service of copy of order *nisi*, 1866 ; contents of copy, 1866.
- service of petition, 1865.
- trust estates, not saved by declaration, provision for purchase-money of, 1871.

DECLARATORY PART,
of decree, 1004, 2181 n.

DECREES AND ORDERS, 986–1070.

- abatement, between hearing and judgment, drawn up during, 1017.
- absent party, without prejudice to, or saving right of, 150, 292.
- Accountant-General, portion of, acted on by, 1783, 1784.
- accounts, numbering of, in, 1005 ; account, ordering an, 991 n.
- adding to, 436, 437, 1260, 1261.

(See ADDING TO THE DECREE.)

- admission of assets, immediate decree for payment made upon, 236.
- admissions, oral, insertion of, in, 1008.

adult, not bound by, when made as if infant, 72 n., 160 n.

allegations in pleadings, must be founded on, 1003 n.

alteration of, 173 n., 659, 660, 1025–1031, 1459, 1575.

alterations in, registrar's power to make, 1014.

amending or correcting, 1019 n., 1029 notes.

order or decree by consent, 1029 n., 1031 n.

how alteration or amendments made, 1030 n.

delay in calling for, 1030 n.

answer, entry of, in 1003.

appeals from, 1459–1505.

appearance, entry of, after, 153, 539.

apportionment on death of tenant for life, to provide for, 1007, 1803.

before Master, prosecution of, 1169 and n.

bespeaking, time for, 1009.

binding, from what period, 980 n., 1016 n.

boundaries for settlement of, 1164, rectification of, 1029.

Chambers, made at, 1323.

drawn up, how, 1008 n.

force of, 1323.

claimant coming in under, a *quasi* party, 635.

class suit in, when made contingent, 218.

clerical error in correction of, 1013, 1028, 1029 n., 1575, 1576.

Clerk of Records and Writs, meaning of, in, 1008.

[The references are to the star paging.]

DECREES AND ORDERS — *continued.*

co-defendants, when made between, 1370.

for payment of costs, 1406, 1407, 1410.

collusion, obtained by, how impeached, 173 n.

by infant, 164–167, 173.

colonial court of, proof of, 868.

conditional, consequence of non-performance of the condition, 742.

conduct of proceedings under, 1168, 1169.

(See CONDUCT OF CAUSE.)

consent, by, how impeached, 973, 974, 1459, 1575 n., 1584, 1585 n.

(See CONSENT.)

consents, insertion of, in, 1088.

corporation, description of, in, 1006, 1784, 1785.

costs, for payment of, form of, 1407, 1409, 1410.

creditor proving under, a quasi, party, 635.

date of, 980 n., 1002, 1016 n.

debts, for payment of, how far a bar to statute of limitations, 643.

declaratory, when made, 1001, 1004, 2181 n.

not made where no statute authorizing it, 1001 n.

declaratory part of, 1004, 2181 n.

deed, for execution of, how enforced, 1061 n.

default, *nisi*, 1026 n.

defendants, when made between, 1370.

definition of decree, 988.

force and effect of, 888 n.

demand, unnecessary on service of, 1045.

demurrer on the ground of, 581.

dismissal of bill after, only by consent, 793; unless decree only for accounts and inquiries, 793, 811.

class suit, not ordered in, even by consent, 244 and n., 794, 795.

final dismissal of bill to redeem, is equivalent to foreclosure, 999 n.

distribution of fund under, effect of, as to parties, 250.

drawing up, 1008–1014.

by whom, 1022 n.

motion for decree, when made on, 826.

effects, description of, in, 1005, 1783, 1784.

election, order for, not made after decree, 817.

enforcing, 1042–1069.

application relating to, made by motion, 1587.

assistance, by writ of, 1062 and n.

(See ASSISTANCE, WRIT OF.)

attachment, by, 1043 n., 1046, 1047.

(See ATTACHMENT, WRIT OF.)

corporation aggregate, against, 1067 and n.

elegit, by writ of, 1068.

(See ELEGIT, WRIT OF.)

fieri facias, by writ of, 1063.

(See FIERI FACIAS, WRIT OF.)

fieri facias de bonis ecclesiasticis, by writ of, 1065.

(See FIERI FACIAS DE BONIS ECCLESIASTICIS, WRIT OF.)

parliament or peerage, against a person having privilege of, 1066.

(See PRIVILEGED PERSON.)

persons not parties, against, 1061.

pro confesso decree, when leave to enforce necessary, 528.

sequestrari facias (by writ of), 1065.

(See SEQUESTRARI FACIAS, WRIT OF.)

sequestration by, 1047, 1049–1061.

(See SEQUESTRATION.)

sergeant-at-arms, by order for, 1048, 1049.

(See SERGEANT-AT-ARMS.)

Trustee Acts, by means of, 1061.

venditioni exponas, by writ of, 1065.

(See VENDITIONI EXPONAS, WRIT OF.)

Courts of Chancery have power to carry their decrees into execution, 1042 n.

in Massachusetts and other States, 1042 n.

United States courts, 1042 n.

persons not parties, against whom or in whose favor an order has been made, shall be liable to or shall have process in United States courts, &c., 1043 n., 1061.

GENERAL INDEX.

[The references are to the star paging.]

DECREES AND ORDERS — *continued.*

enlargement of time to answer, order for, 742.
enrolment of, 1018–1028.

(See ENROLMENT.)

entry of, 1016, 1017.

(See ENTRY.)

date of actual entry, 1016 n.

nunc pro tunc, 1016 n., 1017.

(See NUNC PRO TUNC.)

erroneous, good till discharged, 1081.

error in, 164–168, 172–174, 371, 1576–1578.

(See ERROR.)

evidence in another suit, when available as, 867.

evidence, entry of, in, 984, 1003 and n.

(See ENTRY.)

evidence, how put in, 867.

evidence, how taken after decree, 888.

execution of, not stayed by appeal, or bill of review, or in the nature of bill of review, 1582.

ex parte, appeals from, 1474

fees on, 1015 n.

final, when, 986 n. (a), 993 and n., 994 and n.

ordering account, not so far final as to authorize an appeal, 1462 n.

which decides the whole merits, and reserves no directions, 993 n.

to sell mortgaged premises, 993 n.

although it directs reference to Master, 993 n.

ascertaining amounts due, directing a sale, and giving costs, 993 n.

on a bill for specific performance, 993 n.

for closing a mortgage, 993 n.

on which an execution may issue, 993 n.

as to one defendant and not as to others, 993 n.

on a bill of interpleader, that bill is properly filed, 993 n.

at the end of term at which rendered, 993 n.

dismissing a bill upon its merits, 994 n., 995 notes.

after entry "dismissed" without other words of qualification, 995 n.

what regarded as final in United States courts in reference to appeals, 996 n.;
in some of the State courts, 993 n., 1492 n.

by what court final decrees made in Vermont, 104 n.

final order, when required to complete decree, 995–999.

foreclosure or redemption suit, in, 998 and n.

infant suits in, 165, 997 and n.

pro confesso, decree, when required after, 528.

redemption suit, in, 998.

specific performance suit, in, 999.

finding of fact under Judicature Act, 986 n.

of single judge, 1003 n.

foreclosure for, form of, 214 n. (a), 997.

foreign or colonial court, of, how proved, 863.

in one State, how made to affect land in another, 1033 n.

form of, 1001–1008, 2182 and n.

caption should correspond with time of actual entry, 1002 n.

what it should recite, 1002 n.

rule of United States courts in regard to, 1002 n.

form of, in United States courts, 1002 n.

former suit, decree in, evidence to explain, 659 n.

fraud, obtained by, how impeached, 173 n., 582, 1584; by infant, 164, 165, 173.

funds, description of, in, 1005, 1783.

further consideration, adjournment of, by, 986.

repeated, as often as necessary, 1368.

general nature of, 995–1001.

grounds of, when inserted, 1004.

husband, for payment of wife's fund, to, effect of, 118.

husband and wife, for payment to, effect of, 118.

impeached, how, 173, 295 n., 659, 660, 1459, 1575.

indorsement on copy for service of, 1044.

(See INDORSEMENT.)

infant, against, how impeached by him, 164, 1584.

infant, bound by, although no inquiry whether it is for his benefit, 164.

[The references are to the star paging.]

DECREES AND ORDERS — *continued.*

- except in cases of fraud, collusion, or error, 164, 165.
- infant plaintiff, when bound by, 72, 78, 997 n.
- infant, what cause may be shown by, against, 171-173.
 - how shown for fraud, collusion, or error, 173.
 - new answer, sufficient cause, 175.
 - time for, enlargement of, 174.
 - made absolute against, when, 997 n.
 - reservation in decree of right to show cause and fixing time, 997 n.
 - time for, enlargement of, 174.
- in personam*, 1031 and n.
- inquiries, numbering of, in, 1005.
- interlocutory, when, 597 n., 986-998, 1019, 1159 n. (a); may be altered by final decree, 1871 n.
- interlocutory injunction superseded by decree, unless continued, 1679.
- interlocutory injunctions for, form of, 1671.
- interpleader suit, 1567.
- investment in purchase, or on mortgage of estate, on application for, 1340.
- irregularity, discharge for, 1001.
- judge, meaning of, in, 1008.
- judgment, operation of, as a, 1031-1042.
 - (See JUDGMENT.)
- jurisdiction, defendant out of, allowed to come in under, when, 152.
 - decree without prejudice to rights of, 150.
 - leave for, how obtained, 153; service of order, 153.
 - lands out of, specific performance, 1083 n.
- legacy duty, provision to be made for payment of, in, 1007, 1804.
 - form of order for payment of, 1007.
- liberty to apply, reservation of, by, 996.
- lost, entry of, 1017; redrawing of, 1017.
- lunatic, against, valid, 177 n.
- mandatory part of, 1004-1008.
- married woman, personal decree or order made against a, 186, 997 n.
- minutes, of, 981, 1003-1018 n., 1014.
 - (See MINUTES.)
- money, how to be expressed in, 1005, 1783, 1784.
- motion for decree, on, 828.
- next friend, decree against, 986 n.
- office copy of, 871 n., 1017, 1018.
 - (See OFFICE COPY.)
- one witness, decree not made on evidence of, against another, unless corroborated, 843.
- ordering part of, 1004-1008.
- other courts of law introduced as evidence, 866, 867.
- opening, where, on what ground, time, 1026, 1027 n., 1081 notes.
 - (See ENROLMENT, "vacated.")
- for correcting plain mistake in Master's report, after three years, 1081 n.
- outstanding estate, inquiry as to, 1005.
- papers left on bespeaking, 431, 1009-1012, 1602, 1609.
- partial, when made because evidence defective, 859.
- partnership, for dissolution of, form of, 1248.
- passing, 1014, 1015.
 - appointment for, 1014; adjournment of, 1015.
 - attendance at, and consequences of default, 1015; filing of, 1015.
 - dispensed with, when, 1015.
 - service of, how effected and proved, 1014.
- delivery of decree or order out, for examination previous to, 1015.
- how effected, 1015.
- pro confesso*, where decree taken, 527.
 - effect, 517 and n.
 - payment of money by solicitor or trustee, form of order for, 1005.
 - payment of money to *feme sole*, effect of her marriage on, 97.
 - payment of money or cost, registration of, as judgment, 1035; enforcing, 1045.
 - payment out of court, form of, 1005, 1006; ratification of, 1030.
- periodical payments, time for, to be expressed in, 1006, 1785.
- permissive, form of, for deposit, payment, or transfer into court, 1798.
- personal representative acting under, how far indemnified, 1207.
- personal representative, description of, in, 1006, 1784.
- personam*, formerly operated only in, 1081.

GENERAL INDEX.

[The references are to the star paging.]

DECREES AND ORDERS — *continued.*

persons, description of, when money payable to or from, 1006, 1784.

lea of, 605, 659—661, 664, 692, 1019.

answer in support of, in suit to impeach, 605, 624, 680, 681; averments in, 605, 616, 681.

proceedings on, 681, 692.

(See PLEA.).

pleadings and proceedings, reference to, in, 1002.

preliminary accounts and inquiries, when directed, 987—993.

(See PRELIMINARY ACCOUNTS AND INQUIRIES.)

pro confesso, taken, 525—528, 1026 n.

(See PRO CONFESSO.)

prosecution of, directions as to, and who has, 1169 n.; before service of notice of, how far permitted, 485.

vacation in, 984.

public company, description of, in, 1006, 1784.

purchasers *pendente lite*, 991 n.

recitals in, 1002 and n.

recital in, infant when not bound by, 170.

receiver, for, 1787.

record, not a, until signed and enrolled, 687, 1018.

when decree becomes a record in Massachusetts and other States, 1016 n., 1018 n., 1019 n.

upon a bill to redeem, decree should fix time for redemption, 999 n.

should fix sum due at time of decree, 999 n.

pleadings a part of the record, though not recited in, for the examination of all errors of law, 1002 n.

pro confesso, against non-resident, what it should state, 1002 n.

ordering the sale of property, &c., 1004 n.

to account should state time of, 1004 n.

for money, should state sum, 1004 n.

to account, directions to Master, 1004 n., 1221 n.

rectification of, 1013 n., 1030 notes, 1028—1031; how effected, 1030.

amendment of title, by, 1080.

clerical error, application for, how made, 1018 and n., 1028.

consequential directions only added, 1029.

direction for payment of costs by amendment of, 1030, 1031.

enrolment after, when permitted, 1030, 1081.

rehearing necessary, except for clerical error, or matter of form, 1028, 1029, 1830 n.

redemption, for, should fix time, 2222 n.

form of, 214 n. (a), 998.

reference to record to be written on, 1008 and n.

residence, description of, in, 1006, 1784.

residues of shares, description of, 1005, 1784.

reversal, cause for, 1003 n.

sale under, 1284—1294.

sale under, not invalidated by error or irregularity, unless of substance, 168.

schedule may be used, when, 1006, 1805.

securities, description of, in, 1005, 1783.

separate, reciprocal, direct or inverted, 1004 n.

service of, 527, 1043—1045.

(See SERVICE.)

settled forms of, should be followed, 1004.

shares, description of, in, 1005, 1784.

signed and enrolled, how altered, 178 n., 659, 660, 1030, 1031, 1575.

signature to, 1023 and n.

society, description of, in, 1006.

specific performance, for, 987, 988, 1215; rectification of, 1028.

further order in vendor's suit, 1220; in purchaser's suit, 1220, 1221.

statutory jurisdiction under, how enforced, 1851.

staying proceedings after, 793.

stocks, description of, in, 1005, 1784.

submissions, insertion of, in, 1008.

succession duty, provision to be made for payment of, in, 1007, 1804.

form of order for payment of, 1007.

sums of money, description of, in, 1005, 1784.

survivorship, effect of, on wife's right by, 118, 119, 125.

suspending decree, 1029 n.

[The references are to the star paging.]

DECREES AND ORDERS — *continued*.

Taxing Master, meaning of, in, 1008, 1441, 1442.
 time, for doing act, statement of, in, 1005, 1043 and n. · form of, 1043 n
 enlargement of, how obtained, 1044.
 omission of, how remedied, 1043.
 time for enrolments, in New Jersey, 1024 n.
 for issue of process on, in Massachusetts, 1024 n.
 title of, 1002; amendment of, when permitted, 1030.
 trust, for execution of, effect of on powers of trustees, 1842, 1843.
 trustee acting under, how far indemnified, 1207.
 undertakings, insertion of, in, 1008.
 vacation, how made in, 984; appeal or rehearing of, 985.
 waivers, insertion of, in, 1008.
 how far title to property can be effected by decree, 1081 n., 1083 n., 1081 n.
 for a deed in Ohio, 1061 n.

DECREE (MOTION FOR) (See MOTION FOR DECREE.)

DE DIE IN DIEM,
 method of proceeding in Master's office, 1171.

DEED,

allegation of, when necessary, 367.
 decree for, in Ohio, 1061 n.
 delivery up of, how enforced, 1043 n.
 donee of, when necessary party, 206.
 enrolled under Fines and Recoveries Act, plea of, 662.
 execution of, defective proof of, when remedied, 858.
 how enforced, 1061 n.
 exhibit, provable as, at hearing, 882; when not so provable, 883.
 impeachment of, *onus probandi*, in case of, 850.
 interrogatory as to, form of, 2082.
 loss of, defective proof of, when remedied, 858.
onus probandi, lies on party disputing, 850.
 proof of, 880; proves itself if thirty years old, 878.
 settlement of, by Master, proceedings for, 1261, 1262.
 certificate of approval and execution, 1262.
 conveyancing counsel, assistance of, how obtained, 1217, 1828.
 direction for, absolute, where, 1261; where not, 1262.
 engrossment of, 1262.
 partition suit, in, 1161.
 statement of, in answer, 725; in bill, 368–365.
 inaccurate, in bill, effect of, on demurrer, 544.
 title-deeds, custody of, in partition suits, 1162.

DEFAULT OF ANSWER (PROCEEDINGS AND PROCESS TO COMPEL),

process against unprivileged defendants under no disability, 488.

 interrogatories for defendant's examination, 488.

 time for answering, 488.

 enlarging, 488.

penalties for not answering in due time, 488.

 attachment, 488 and n.

 issued on affidavit, 488 and n.

 before time to answer has expired, 489.

 effect of giving notice before issuing the writ, 489.

 order for further time irregular after attachment, 489.

 returns, 490, 491.

 when sheriff takes bail, 490.

 when he commits or detains in prison, 490, 491.

 time allowed to bring defendant to bar, 491.

 proceedings, 491.

 to detain in custody, 491.

 to take bill *pro confesso*, 492–496.

 practice under general orders, 492.

 time for obtaining order, 492.

 defendant in jail for misdemeanor, 493.

 felony, 493.

 right of defendant to discharge, 493.

 sequestration, 494.

 order to take bill *pro confesso*, 494.

 execution of sequestration, 495, 496.

[The references are to the star paging.]

DEFAULT OF ANSWER — *continued.*

- process against particular defendants, 496.
- peers and members of parliament, 496.
- sequestration *nisi*; absolute, 496.
- bill taken *pro confesso*, 497.
- where bill for discovery, 497.
- attorney-general, 497.
- corporations aggregate, 497.
- infants, and persons of unsound mind, 498.
- married women, 498.
 - separate answer of, 498.
 - not bound to join in husband's answer, 498.
- husband cannot put in joint answer, 499.
- husband a lunatic, 500.
- poverty of defendant, unable to answer in consequence, 500.
- reference, to inquire of poverty, 500, 501, 502.
- court may assign counsel and solicitor, 500, 501.
- where prisoner is of unsound mind, 502.
- or obstinate, 502.

DEFAULT AT HEARING,

- decree made on, 978.
- restoration of cause after, when allowed, 978, 1026.

DEFAULT (WILFUL). (See WILFUL DEFAULT.)

DEFECT,

- in prayer, when supplied under prayer for general relief, 378.

DEFENCE TO SUIT,

- alternative, when permitted, 714.
- answer by, 534, 711-715.
- answer in support of plea, no part of, 624.
- appearance, entry of, by defendant, first step, 479, 533, 541.
 - although already entered for him by plaintiff, 479-541.
- authority for, to solicitor, what sufficient, 533.
- benefit of, insisting on, by answer, as if pleaded or raised by demurrer, 714; can only be had at hearing, 715.
- circumstances constituting, should be pleaded, 712.
- corporation, by, 148.
- defendant's proceedings for, 533-535.
- demurrer, when proper, 814, 542.
- disclaimer, by, proper, when, 299, 585, 708.
 - costs, where defence not so raised, 708.
- forms of, 533, 534.
- inconsistent, by answer, not allowed, 713.
- new, after amendment, 409.
- new, after plea overruled, 701.
 - by partial demurrer, when, 702.
 - by pleading *de novo*, 702 n.
 - by second plea, when, 702.
 - not by demurrer *ore tenus*, 588, 702.
- new, by infant, may be made on attaining twenty-one, 170.
- plea, when proper, 608.
- pleadings, not distinctly raised, when allowed, 712.
- purchase for value without notice of, must be pleaded, 674 n., 679.
- review, to bill of, 1583.
- separate, by married woman, when she may obtain order for, 181, 182.
- separate, to separate parts of the bill, allowed, 610.
 - not to whole bill, 610 n., 617 n., 788.
 - costs of, when defendants jointly interested, 780, 781, 1418, 1436, 1437.
 - when parties appear by same solicitor, 730, 1448.
- several defences may be set up by answer, 718; if consistent, 714.
- several defences, joinder of, how far permitted, 787, 788.
 - amendment of bill after, 789.
 - exceptions for insufficiency after, 789.
- extent of each, 787, 788.
 - form and title of defence in such case, 788.
- severance in, by, defendants, appearing by same solicitor, when sanctioned, 730.
- time for, where plaintiff ordered to give security for costs, 36, 489, 740.
- trustees, by, should be joint, 1418.

[The references are to the star paging.]

DEFENDANT, 1882 n.

who may be, 129-189.

absconding, service on, out of the jurisdiction, 449.

absconding, proceedings to take bill *pro confesso* against, under statutes, 456, 457
and n.; application how made, and necessary evidence, 456.

under general order, 458, 459; application, how made, and necessary evidence
459, 460.

(See *PRO CONFESSO*.)

addition of, before decree, 294, 295, 405, 409; after, 405.

cause heard on motion for decree against new defendants, though issue
joined, as to the others, 819.

evidence against added defendants, 294, 406.

administrator, plea that defendant is not, 631.

adult, if described in bill as infant, not bound, 180 n.

alleged character, plea that defendant does not sustain, 631.

amendment, 406 n., 418 n.

answer, may read his own, on question of costs, 848, 1380.

but not to show tender, 1896.

on motion for decree, after notice given, 822.

answer of co-defendant, when entitled to official copy of, 757.

number of copies, and payment for same, 757, 758.

appearance of, 536-541.

(See *APPEARANCE*.)

attainder of, plea of, 156, 631.

Attorney-General, when made, 7, 180, 140.

bad health, in, time allowed for answer, 178.

bankrupt, 180, 157-160.

bankruptcy of, plea of, 158, 631.

bankruptcy *pendente lite*, not an abatement, 158.

dismissal of bill for want of prosecution, after, 159, 808, 814.

dismissal of bill at instance of plaintiff, after, 158.

supplemental order on, 159, 1515, 1516 and notes, 1522.

case of, plaintiff not entitled to discovery of, unless common to both, 579, 580.

committee of lunatic, 175, 176.

competency of, inquiry as to, 177.

convicted persons, 130, 156.

conviction of, for felony or treason, plea of, 631.

corporations and joint-stock companies, 143-148.

(See *COMPANY, PUBLIC. CORPORATION. JOINT-STOCK COMPANY*.)

coverture of, plea of, 631.

death of, abatement on, 1513; when no abatement, 1511 and n.

determination of the suit, when a, 1513, 1542.

contempt, process of, issuable pending partial abatement by, 1544.

dismissal for non-prosecution, effect of, on conditional order for, 1544.

effect of revivor after, 1545.

hearing and judgment, between, effect of, 1544.

information, relator to, may be an abatement, 13, 14.

motion for revivor or dismissal of bill, on, 813, 814, 1544.

revivor against successor, on total determination of interest, 1507.

taxation of costs after, when allowed without revivor, 1529.

demurrer may be good as to one and bad as to another, 584.

disability, cannot plead his own, when, 156, 631.

evidence of, plaintiff not entitled to discovery of, unless common to both, 579, 580:

evidence taken on behalf of, not to be used against co-defendant without notice,
891.

executor, plea that defendant is not, 631.

allegation of proof of will by, unnecessary, 318.

foreign states and governments, 141, 142.

(See *FOREIGN STATE AND GOVERNMENT*.)

heir, plea that the defendant is not, 631.

husband, death of, when no abatement, 188.

effect as to widow's answer, 188.

husband, usually made, to wife's suit, 109.

idiot, lunatic, and person of unsound mind, 180, 175-178.

infants, 180, 160-175.

(See *INFANT*.)

injunction, at instance of, 1618.

interest of, must be shown by bill, 821.

demurrer, for want of, 322, 557.

[The references are to the star paging.]

DEFENDANT — *continued*.

plea for want of, 681.
 jurisdiction, person out of, 149–154.
 liability of, must be shown by bill, 581.
 lunacy of, supplemental order on, 1525.
 marriage of female, not an abatement, 188.
 married woman, 130, 178–189.
 married woman, death of, an abatement, 188, 189.
ne exeat at instance of, against plaintiff, 1705; against co-defendant, 1705.
 names of, statement of, at end of bill, 889.
 next friend cannot be, 69 n.
 non-appearance of, at hearing, proceedings upon, 979.
 officer of corporation, made defendant for discovery, 144, 298.
 officer of foreign state, made defendant for discovery, 141 n.
 outlaws, 130, 158.
 outlawry of, 158; plea of, 681.
 paupers, 154–156.
 person of, plea to, 681.

(See PLEA.)

privity, between plaintiff and defendant, demurrer for want of, 322, 557.
 receiver, at instance of, 1734.
 revivor by, after decree, 813; after order for preliminary accounts and inquiries, 993.
 security for costs, when required from, 29, 1570.
 service of proceedings upon non-appearing, 458, 1596, 1607, 1734.
 signature of, to answer, 738, 746, 751; to disclaimer, 708; to plea, 689.
 specific performance, when decreed at instance of, 880 n., 885.
 statement of case against, in bill, 321.
 striking out names of, by amendment, 403.
 tenant in tail, death or cesser of interest of, proceedings on, 229, 286.
 wife, when made, in husband's suit, 109, 179; effect of making, 109 n., 179 n.
 unnecessary, how got rid of, 801.
 in England, king or queen, queen consort, or the heir apparent, not liable to be sued, 129 and n.
 in America, government or State, not liable to be sued, by citizens or by subjects of any other State or of any foreign state, 129 n.
 this exemption does not extend to suits by a State or any foreign power, 129 n.

DEFENDANT (FORMAL),

process by service on, under general order, 192, 428–432.
 appearance, of entry of, 482, 539.
 costs occasioned thereby, 482.

(See APPEARANCE.)

costs of, plaintiff proceeding by ordinary process liable to, 481.
 death of, original bill must be filed against representative, 429.
 misnomer of, in bill, how cured, 480.
 replication, filing, in case of, 832.

(See COPY OF THE BILL.)

DELAY,

conduct of proceedings, changed for, 1169.
 interlocutory injunction, effect of, on application for, 1668.
 on application to dissolve, 1678.
 pleading, 324 n., 372 n.

DELIVERY,

account, of, not sufficient to constitute stated account, 666.

DELIVERY (OUT OF COURT),

documents deposited in court, of, 1888, 1889.
 effects, exchequer bills or bonds, how effected, 1813.
 pending abatement, 1548.
 personal representatives, to, how effected in case of, 1813.
 registrar's certificate for, evidence on which issued, 1813.

DELIVERY UP,

instrument, of, directed when use would be unconscionable, 1680.
 production of documents, in suits for delivery up of documents, 1829.

DEMAND,

interest on sums payable on, at what rate allowed, 1257.
 subpoena for costs, on service of, 1458.
 unnecessary, on service of decree or order, 1045.

[The references are to the star paging.]

DEMANDS (JOINT AND SEPARATE),
cannot be united in one bill, 389 and n.

DEMERA,
injunction to restrain proceedings in courts of, 1731.
receiver of property in, when appointed, 1731.

DEMURRER, 542-602.

only a mode of defence, and never used to settle a plea or answer, 542 n.
an answer in law, 543 n., 603 n.
accompanied by plea, and answer, 543 n., 589 n., 590 n., 592 n.
what must be founded on, 543 n.
averments in plea, when case is argued on plea and answer, 644 n.
to whole bill for discovery and relief, good for discovery only, 547 n.
where relief is the chief object, 547 n., 548.
where material discovery is elicited, 548 n.,
to bill setting forth various claims, some of which are proper for equity, 749 n.
on the ground that plaintiff has plain and adequate remedy at law, 550 n.
to a bill for an account, 551 and n.
grounds and extent of jurisdiction of equity over accounts, 551 n.
to bill to set aside award, 553, 554, and n.
matter in dispute, of trifling value, 558 and n.
to a bill of discovery, in aid of defence to suit in foreign court, 562 n.
seeking disclosure of facts tending to criminate, or create forfeiture, or
subject to a penalty, 563 and n., 564 notes, 565 n., 566 notes.

bad in part, 584 n.

address of plaintiff, for non-statement of, 357, 581.

adequate value, for want of, 328 and n., 329 and notes, and 558 and n.

Admiralty, Court of, that subject is within jurisdiction of, 553.

administration, demurrer, to discovery on proceedings on grant of, in suit to administer real estate, 570.

admission by, extent of, 544-546 and notes.

advance of, 595.

affidavit, because bill not accompanied by, 394, 562.

included in demurrer for want of equity, 586, 587.

that demurrer is not interposed for delay, 590 n.

allowance of, effect of, 597-599.

condition of case, after allowance of, in Massachusetts, 597 n.

not out of court, but open to amendment, 597 n.

in United States courts, 597 n.

ambiguous statements in bill, construed adversely to pleader on, 313 n., 314 n., 545.

amended bill to, 409, 582, 588, 597; when irregular after answer to original bill, 409, 583.

time for, 591 and n.; where no answer required, 592; form of, 586.

amendment of, 584, 591, 597, 599, 600 and n.

(See AMENDMENT OF DEMURRER.)

amendment of bill after, 411, 593, 594.

allowance of, on, 289, 419, 597, 598; of partial, 597, 598, 789.

overruling of, after, 601.

(See AMENDMENT OF BILL.)

answer, accompanying, extent and nature of, 581, 589.

demurrer to, 542 n.

exceptions to, 590, 601.

(See EXCEPTIONS FOR INSUFFICIENCY.)

antenuptial agreement, to discovery in suit to enforce, 570.

appeal from order made on, 598, 1460.

appeal from allowance of, with leave to amend, by plaintiff, 598.

by defendant, 598.

appeal from order overruling or sustaining, not barred by amendment of bill, 601, 986 n. (a).

amendment of bill under order of course irregular, 411, 601.

dismissal of bill under order of course irregular pending, 602, 790.

appropriate defence, when, 314, 542.

Bankruptcy, Court of, that subject is within jurisdiction of, 553.

bankruptcy of plaintiff, on ground of, 62.

bar to new suit, when, 598.

briefs upon, 595 n.

case, on the ground that discovery only relates to defendant's, 579.

inapplicable where plaintiff's case disproves defendant's, 580.

or discovery common to both, 580.

[The references are to the star paging.]

DEMURRER — *continued.*

- cause of, must be expressed, 586.
but a material fact must not be introduced, 2086 n.
- cause paper, when placed in, 595.
- causes of, several may be shown, 588.
- certainty in statements of bill, for want of, 313 n., 314 n., 368, 369, 371, 562.
- certificate of counsel, 590 n.; and affidavit of defendant, 590 n.
- champerty, because discovery would expose defendant to penalties for, 563.
- charity commissioners, for want of sanction of, 811 n.
- commencement of, 585.
- conclusions of law, not admitted by, 545, n.
- costs on, 594, 598, 599, 602.
(See Costs.)
- costs, on dismissal of bill liable to, 542, 1894.
- coverture of plaintiff, on the ground of, 556.
- criminal prosecution, because discovery would expose defendant to, 563—566.
- cross-bill, to, 1549 n.
- decree in another suit for same matter, on ground of, 561.
- defence by, nature of, 543; less frequent than formerly, 542.
- denial in form and substance of plaintiff's right in equity, 544 n.
- discovery, to, grounds of, 547 n., 548, 562—584.
 - answer to relief, when it may be accompanied by, 548.
 - rare occurrence of, under present practice, 562.
 - special, must be, 587.
- discovery, bill of, to person of plaintiff in, 558.
- dismissal of bill, on plaintiff's application, after filing of demurrer, 598.
- distinction between demurrer and plea, 603.
- Divorce, Court of, that matter is within jurisdiction of, 553.
- documents, statement of, in bill, admitted by, though erroneous, 544.
 - effect of, where professedly inaccurate, 544, 545.
 - doubtful questions of title, not decided on, 542.
- Ecclesiastical law, on the ground that discovery would expose defendant to censure under, 563, 564.
- ejectment bill, to, 545, 551, 552.
- engrossment of, 591.
- entry of, with registrar no longer required, 594.
- equal right with plaintiff, to discovery, on ground that defendant has, 569.
- Equity, Court of, that matter is within jurisdiction of another, 554.
- equity, for want of, 314, 549, 557 n.
 - includes a demurrer for want of jurisdiction, 549 n.
 - reaches defect of parties, 558 n.
 - ore tenus* for want of parties, 588 n., 589 n.
 - where defect arises from omission of necessary circumstance, 549.
 - where defendant resident abroad, 550.
 - form, demurrer for deficiency in, when included in, 587.
 - leave of the court, demurrer for want of, not included in, 587.
- facts, statement of, in bill, admitted by, 544, 545.
 - secus*, if untrue of facts judicially noticed, 546.
- file, when and how taken off, 592.
 - difference between taking off file and overruling, 592, 593.
- filings of, 591—598.
 - notice of, 598; neglect to give, effect of, 598.
 - irregular, if after expiration of time, 592.
 - or after issue of attachment for want of answer, 592.
 - or service of traversing note, 515, 516, 592; unless by special leave, 515.
- foreign law, on the ground that discovery would expose defendant to punishment under, 567 and n.
- forfeiture, because discovery would expose defendant to, 562—569.
 - extends to all circumstances having that tendency, 563.
 - obviated by waiver of forfeiture, 386, 604.
- (See FORFEITURE.)*
- form of, 585—591; of demurrer and answer, 589.
- form, for deficiency in matter of, 581, 582.
 - when included in demurrer for want of equity, 686, 587.
- fraud, demurrer should be filed, though bill charges, 542.
- frauds, on the ground of the statute of, 364, 365, 561 and n.
- general allegations, 324 n., 369 n., 545 n.
- general and special, 586.
- general nature of, 542—546, 586.

[The references are in the star paging.]

DEMURRER — continued.

- good, as to one defendant, and bad as to another, may be, 584.
- as to discovery and not as to relief prayed, whether to be allowed or overruled, 547 n., 548 n.
- grounds, different, of, 547-584.
- headings of, 2085 and n.
- bearing of, 595-597, 972 n.; in vacation, 985 n.
 - (See HEARING.)
- immateriality, to discovery on the ground of, 570 and n.
- impertinence, not taken advantage of by, 849.
- inadequacy of value, on the ground of, 329, 558.
- endorsement on, 591.
- infancy of plaintiff, on the ground of, 558.
- infant of, filing of, 591.
- inferences, legal, not admitted by, 545.
- information and belief, 545 n.
- injunction, not granted pending, 595, 596 n., 1671.
 - advance of demurrer in such case, 1671.
- injunction, dissolution of interlocutory, on allowance of, 1675.
- interest in the defendant, for want of, 299, 821, 557.
- interest in the plaintiff, for want of, 314, 556.
- interpleader bill, to, for want of accompanying affidavit, 394.
- interrogatories filed, pending, 480.
- irregularity in frame of bill, for, 582.
- joint, 586 n.
- judgment, demand of, in, 589.
- jurisdiction, to, grounds of, 549-555 and n.
 - in the United States courts, 555 n.
- Law, Court of, on ground that subject is within jurisdiction of, 550-552.
 - jurisdiction, concurrent, does not lie if, 552.
 - as in case of fraud, 552; except in case of a will, 552.
- leave of the court, for want of, 587.
- length of time, on the ground of, 559 and n., 561 n.
 - to bill for redemption of mortgage, 561 n.
 - account, 561 n.
- limitations, statute of, on the ground of, 560 and n.
- lunacy or idiocy of plaintiff, on the ground of, 84, 556 n.
- lunatic, filing of, where committee, adversely interested, 591.
- maintenance on the ground that discovery would expose defendant to penalties for, 563.
- married woman, separate, of, 591; order for, necessary, when, 591.
- misjoinder of parties, 287 n., 302 n.
- mortgagee a trustee, to discovery, whether, 570.
- multifariousness, for, 348, 559.
 - when this objection should be taken, 559 n.
- name of defendant, striking out of, after allowance of, 599.
- oath, put in without, 590.
- offer to do equity or waive penalty or forfeiture for want of, 385, 386, 387, 562; included in demurrer, for want of equity, 587.
- office copy of, taking, 593.
- ore tenus definition of, 588; confined to case where demurrer already on record, 588; but cannot be on same ground, 588.
- coextensive with demurrer filed, must be, 589.
- costs of, 599, 602 n.
- leave of the court, demurrer for want of, may be taken, 587.
- plea overruled, not allowed after, 702.
- origin of term, 543.
- overruling, effect of, 542, 600, 602.
 - order on defendant, after demurrer overruled, in Maine, 601 n.
 - course open to defendant, 601 notes.
 - answer, when without prejudice to defence, by, 602.
 - answer, after, 590 n., 600.
 - costs, on, 602.
 - proceedings to enforce, when stayed, 1468.
 - difference between overruling and taking off the file, 592.
 - dismissal of bill after, not of course, 790.
 - plea after, 590 n., 600.
 - reservation to hearing of question raised by, 602.
 - second demurrer, when allowed after overruling first, 600.

[The references are to the star paging.]

DEMURRER — *continued.*

- traversing note, filing after, 515, 602.
- papers for use of court at hearing of, 595.
- part of bill, demurrer to, 585, 600 n.
- partial, where put in, 583 : allowance of, effect of, 597.
 - answer, accompanying, 581, 583, 589 ; when not necessary, 583.
 - commencement of, 585.
 - overruling, effect of, 600.
 - because answer too extensive, 589, 590.
 - because demurrer not extensive enough, 548 n., 583.
 - plea overruled, when permitted after, 702.
- parties, for want of, 287, 288, 558 and n., 2090 n. ; how obviated, 288.
 - misojoinder of, 302 n.
 - amendment of bill after, 289 ; form of, 288.
 - injunction or receiver after, 598 n.
 - partly good and partly bad, cannot be, 583, 584.
 - penalty, because discovery would expose defendant to, 562–569, 563 n., 564 n., 565 n., 566 notes.
 - extends to all circumstances having that tendency, 583.
 - obviated by waiver of penalty, 386, 563.

(See PENALTY.)

- pendency of another suit for the same matter, on the ground of, 561.
- perpetuate testimony, to bill to, grounds of, 316, 817, 1572.
- person of plaintiff, to the, 556 ; where plaintiff cannot sue alone, 556.
 - discovery, in case of bill of, 556.
 - extends to whole bill, 84, 556.
- petition of right, to, 133.
- plea, after demurrer overruled, 600 ; leave of court necessary for, 600.
- positiveness, for want of, 860, 562 ; included in demurrer for want of equity, 587.
- presumption against the bill, 549 n.
- privity between plaintiff and defendant, for not showing, 322, 557.
- Prize, Court of, that matter is within jurisdiction of, 553.
- Probate, Court of, that matter is within jurisdiction of, 553.
- production, not ordered after filing of, 1831.
- professional confidence, to discovery on ground of, 571–578.

(See PROFESSIONAL CONFIDENCE.)

- proper relief, on the ground that bill does not pray, 825, 556.
- protestation, in, 585.
- public interest, on the ground that discovery would be against, 581.
- punishment, because discovery would expose defendant to, extends to all circumstances having that tendency, 386, 387, 548, 562, 569.
- purchaser innocent, without notice of plaintiff's claim, 569 and n.
- purchaser with notice, from innocent purchaser without notice, 569 n.
- receiver, pending litigation in Probate Court, to bill for, 552.
- record, matters repugnant to, not admitted by, 545.
- relief to, grounds of, 547–562.
- repugnant matters, not admitted by, 545 and n.
- restoration of, when struck out of paper, 596.
- review, to bill of, 1578, 1579, 1583.
 - allowance of, effect of, 1580, 1583.
 - error, apparent, to bill on ground of, 1583.
 - irregularity, on ground of, 1578, 1579.
 - length of time, on ground of, 1583.
 - non-relevancy of new matter, 1583.
 - overruling, effect of, 1583.
- scandal, not taken advantage of by, 349.
- second, when permitted after first, to whole bill, overruled, 600.
 - leave of the court necessary for filing, 584, 600.
- separate, allowed to distinct parts of the bill, 584 ; form of, 586.
- setting down, 594, 595.

(See SETTING DOWN.)

- signature of counsel to, 591 and n.
- signature of counsel to the bill, for want of, 312, 899, 562.
- signature of defendant to, not necessary, 590.
- speaking, definition of, 587 and n.
- special, 586 n.
- stand for answer, not ordered to, 600.
- standing, over, time for, must not be indefinite, 597.
- statutory jurisdiction, that matter is within, 553.

[The references are to the star paging.]

DEMURRER — continued.

- striking out of paper, effect of, 598.
- subornation of perjury, because discovery would expose defendant to punishment for, 588.
- substance of the bill, to the, 556–561.
- sufficient, when held to be, 594.
- supplemental bill, to, grounds of, 1534.
- tenant a trustee, to discover whether, 570.
- third person, interested in discovery, on ground that, 581.
- time for, 591; accompanied by answer, when, 592.
 - amended bill, to, 592.
 - extension of time, 592.
 - partial demurrer, in case of, 592.
 - security for costs pending, giving, 86.
 - vacation, runs in, 591.
- title, doubtful questions not decided on, 542.
- title of, 585; when joined with other defence, 788.
- traversing note, leave to put in necessary, after service of, 516, 592.
 - filings, after overruling demurrer, 516, 602.
- unsound mind, person of, filing of, by, 591.
- variance, 368 n., 545 n.
- waiver of forfeiture or penalty, for want of, 563.
- want of equity, 586 n., 588 n.
- whole bill, to, except specified part, good, 585.
- whole matter included in bill, on ground that it is not, 330, 558.
- withdrawal of, 595.
- written instruments, defects in pleading, 368 n.

DEMURRER AND PLEA,

- defence by, 787, 788.
- setting down, 789.

DEMURRER BY WITNESS, 942–945.

- costs of, 944, 945.
- filings of, 944.
- forfeiture or penalty, because evidence would expose to, 942.
 - (See **FORFEITURE. PENALTY.**)
- form of, 944; professional confidence, where on ground of, 942.
- grounds of, 942.
- oath, must be upon, 944.
- office copy of, by whom taken, 944.
- overruling order made on, 944; where partial, 944.
 - prejudice, without, 944.
- professional confidence, on the ground of, 944.
 - (See **PROFESSIONAL CONFIDENCE.**)
- refusal to produce under *subpæna duces tecum*, not necessary in case of, 943.
- setting down, 944: service of order for, 944.

DENIAL.

- answer by, must be direct, and extend to particular circumstances, 726.

DEPONENT. (See WITNESS.)

DEPOSIT (IN COURT),

- appeals and rehearings in Chancery, on, 1480, 1481.
- not required on appeal motions, 1487, 1603.
 - or pauper appellant, 1482.
 - or petitions, 1481, 1482, 1612.
- cause of husband and wife, to, effect of on wife's right by survivorship, 115.
- chattels, of, when directed, 1778.
- documents, of, in Record and Writ Clerks' office, 1836; how effected, 1837.
 - copies or extracts from, how made, 1838; charges on making, 1679 n.
 - delivery back, how obtained, 1838, 1839.
 - inspection of, practice as to, 1838; fees payable on, 1838 n.
 - jurisdiction, not ordered to be taken out of the, 1838.
 - production of, how obtained in court, 872, 1838; fees on, 872 n.
 - out of court, 872, 1838; fees on, 672 n.
- Exchequer bills, and specific chattels, of, when ordered, 1778; how effected, 1788.
- Indian debentures, of, how effected, 1788.
- opening biddings, amount of, on, 1287, 1291.
 - repayment of former purchaser's, 1291.
 - return of, 1292.

GENERAL INDEX.

[The references are to the star paging.]

DEPOSIT (IN COURT) — *continued.*

order for, how enforced, 1793; form of, when permissive, 1793.
review, on bill of, or in the nature of bill of, 1582.
sale by court, on, security for, how given, 1272.
payment into court of, 1275, 1277; how enforced, 1277.
return of, on discharge of purchaser, 1285.
securities, of, mode of effecting, 1789.
security for costs, as, 34.

(See **COSTS, SECURITY FOR.**)

DEPOSITEE,

chattel, of, when depositor not necessary party to suit by, 223.
deeds, of when necessary party, 206.

DEPOSITIONS,

alteration and interlineation in, how authenticated, 910 n.

commission, 915, 916 n.

costs of, immaterial or irrelevant, 905.

courts, taken in other, how introduced, 866.

order to read necessary, 866.

de bene esse, how taken, 932, 938; order to use, 939.

description of deponent, 894 n.

documentary evidence, depositions are not, 862.

entry of, in decree or order, 984, 1003.

examiners, 888 n., 906; in narrative form, 904.

filings of, 910.

before closing of examination, when permitted, 911.

de bene esse, when taken, 938.

Ex parte, when taken, 901, 902.

issue, trial of, when read at, 1117.

admissibility of, determined by judge, 1117.

admission, order for, how obtained, 1118.

death of witness, after, 1118.

Master, when read before, though taken in another cause, 1189.

Master, how taken before, 1195–1197.

notice, 917 n.

objected questions to be noticed in, 905.

opposite party may use, 950 n.

office copy of, 910; when taken *de bene esse*, 938 n.

paper on which to be written, 911.

partition, taken under writ of, how written and returned, 1153, 1159.

printing, 901–903.

copy for printer, 902; copies to be taken, 903; charges for, 903.

time for, when issue joined, 902; on motion for decree, 825, 902.

reading over to witness, 904.

signature of examiner to, 910, 911; omission of, effect of, 911.

refusal of witness, on, 905.

witness of, to, 904, 905.

suit, in another, when admissible, 867–871, 940 n.

co-defendants, as between, 869.

cross-causes, in, 868.

death of witnesses not necessary, 870.

dismissal of bill, after, 870.

legatees, in suit by, 869.

motion for decree, where cause heard on, 870.

office copy, duly signed, read from, 871.

order, to read, necessary, 867; how obtained, 871; available by opposite party,

871; answer not put in evidence, does not extend to, 868, n.

suppression, 951.

translation of, in foreign language, how obtained, 919.

(See **EXAMINERS.**)

DEPOSITOR,

of chattel, where not necessary party to suit by depositor, 223

DEPUTY SHERIFF,

delivery of attachment to, 466.

(See **SHERIFF.**)

DESCRIPTION,

next friend's statement in bill, 359; amended bill, in, 402 n.

omission of, how taken advantage of, 359 n.

petitioner, statement of, 1604.

[The references are to the star paging.]

DESCRIPTION — continued.

plaintiff's, statement of, in bill, 357; amended bill, in, 402 n.
class-suit, in, 245, 360.
not required, where suing by next friend, 359.
omission of, how taken advantage of, 357.

DESERTED WIFE,

advances made by stranger for maintenance of, repaid him, 103.
amount of settlement on, 102.

DETAINDER,

lodging, of, against defendant, already in jail, by messenger, 490.
by sergeant-at-arms, 494, 1048; by sheriff, 491, 1047.

DEVISAVIT VEL NON (ISSUE OF),

costs of, 1148, 1149, 1383, 1384.

(See Costs.)

creditor's suit, when directed in, 1075.
examination of witnesses to will at trial of, 876.
execution of will, must be proved by all the witnesses, 1118.
heir, right of, to, 876, 877, 1074, 1075; how forfeited, 1074, 1075.
not lost by being party to suit to establish will as to personality, 1075.
interlocutory application, by heir, directed on, 1079.
jury, right of heir to, 1080.
refusal of, by heir, effect of, 1075.
stage of cause at which directed, 1078, 1079.
waiver of, 1075; by infant, 1075.

DEVISEE,

administration decree on application of residuary, others not being parties, 432,
433; but they must be served with notice of it, 218, 433.
alien, discovery whether he is, must be given, 568.
annuity, not made a trustee by charge of, 653, 654.
co-plaintiff with heir, should not be, 233.
executors, when necessary parties, 226, 227.
mortgagee of, parties to foreclosure suit by, 194, 215, 221.
party necessary to suit to charge real estate, 261.
presumptive, cannot sue, 316.
purchaser of, when necessary party to suit for specific performance, 285.
remainder, in, when necessary parties, 227.
retainer by, 1425.
trust, in, when he represents *cestui que trust*, 222.

DILIGENCE,

due, to execute process, must be used when bill taken *pro confesso*, 465.

DIOCESES,

division of England into, judicially noticed, 546.

DIRECTION (REGISTRAR'S),

lodging at Accountant-General's office, 1810, 1811.
transfer, sale, or delivery out of stock or securities, for, 1810–1813; where made to
personal representatives, 1813.

DIRECTORS OF PUBLIC COMPANY,

costs, liability of, for, 147 n.
individual members may sue, when, 25, 26 n.
payment into court by, when directed, 1772.

DISABILITY,

absolute, or qualified, 45, 129.
defendant, of, plea of, 156, 631; of co-defendant, 631.
compromise, on behalf of person under power of court to, 66, 67.
defence by answer on ground of plaintiff's, does not relieve defendant from obligation to answer fully, 720.
excommunication, no longer a, 45 n.
general allegation of, plea of adverse possession not invalidated by, 672.
limitations (statute of), effect of, on right of person under, to sue, 647.
motion on behalf of person under, 1595.
petition on behalf of person under, 1604.
suits against persons under, 129, 180, 156–189.
by persons under, 45–128.

DISAVOWAL OF SUIT BY PLAINTIFF,

proceedings upon, 807–309.

[The references are to the star paging.]

DISCHARGE,

- answer, defendant in custody for want of, when entitled to, 490, 491, 493, 740.
 - amendment of bill on, 425, 509, 522.
 - filings answer, on, 508.
 - pro confesso* order, on submission to, 525.
 - waiver of right to, 493.
- appearance, defendant in custody, for want of, when entitled to, 472.
- appearance, of process to compel, application for, how made, 510, 511.
- attachment, of, for irregularity, 1043 n., 1047.
- attachment for non-payment of costs, of, for irregularity, 1451 n.
- change, solicitor of, order to, for irregularity, 1847, 1848.
- charging order, of, 1089.
- conditional appearance, of, 587.
- contemnor may apply for, 505.
- costs, of process for non-payment of, for irregularity, 1452, 1453.
- de bene esse*, of order for examination of, for irregularity, 987.
- distringas*, to restrain transfer, of, 1693.
- election, of order for, 817.
- examination of defendant upon interrogatories, after, 778.
 - application for, how and when made, 773.
- Ex parte* order, of, 1602.
- husband, in custody for want of joint answer, of, 181.
- injunction, of, for irregularity, 1687.
 - misstatement of facts, when, obtained on, 1664.
- motion, of order on, for irregularity, 1602.
- ne exeat*, of writ of, 1712-1714.
- order of course, of, 1474, 1590.
 - application for, to whom made, 1474, 1590.
 - order, of, for irregularity, application for, when to be made, 1001.
 - pauper prisoner, of, for want of answer, on filing answer, 501; costs, 501.
 - payments, as to, in account containing charge, when admitted, 1227-1229.
 - petition, of order on, for irregularity, 1611.
 - process of contempt for irregularity, of, 510.
 - application, how and when made, 510, 512.
 - pro confesso* order, of, on what terms granted, 524, 525.
 - purchaser in specific performance suit, because title defective, 1218.
 - purchaser under sale by court, of, 1281, 1285, 1288, 1292; opening biddings on, 1288.
 - receiver, of, 1764-1766; of receiver's security, 1766.
 - restraining order, under 5 Vic. c. 5, § 4, of, 1690.
 - revivor, of order for, 1510.
 - sequestration, of examination *pro interesse suo* after, 1058.
 - mesne process, where upon, 1059.
 - sole defendant, of, from custody on death of sole plaintiff, 511.
 - stop order, of, for irregularity, 1691.
 - surety to writ of *ne exeat*, of, 1714.
 - witness, attached or committed for contempt, of, 909.

DISCLAIMER, 706-710.

- account, of interest in, not a protection against setting it out, 706, 707.
- amendment of bill, after, 709.
- answer, as an, 707 n.
- answer, generally accompanied by, 706.
 - inconsistency between answer and disclaimer, effect of, 709.
- bar, disclaimer at, by counsel, in suit, effect of, 706 n.
 - at hearing of petition, 706 n.
- bill, not showing existing right in, plaintiff not sustained by, 817.
- co-defendants, rights claimed against, should be reserved by, 707.
- costs of defendant after, when allowed, 709, 710; when not allowed, 710.
- costs of suit, defendant when ordered to pay after, when, 709.
- costs of suit, disclaiming defendant when ordered to pay, 709, 1424 n.
- costs, defendant not protected by disclaimer from discovery of facts showing liability to, 707.
- costs of defendant, not putting in, in proper case, 706.
- defence by, when appropriate, 300, 584, 706.
- definition of, 706.
- discovery, disclaimer not a protection against, when costs prayed, 707.
- dismissal of bill, after, 709.
- effect of, 709.
- estoppel by, 709 n. (a).
- exceptions for insufficiency to, 708.

[The references are to the star paging.]

DISCLAIMER — continued.

filing of, 708.
form of, 707.
fraud, disclaimer not a protection, where discovery as to, is sought, 707.
 although defendant married woman, 185, 707.
irregularity in, waived by exceptions, 708.
liability cannot be disclaimed, 706.
oath to, 708, 710 n. (b); dispensed with by order, 708.
 order, how obtained, 708.
office copy, of, 708.
plaintiff's right against other defendants not prejudiced by, 706, 707.
plea, as a, 710, n. (b).
printing of, 708.
replication not filed to, 708, 829; unless coupled with plea or answer, 708.
 costs of, 709.
release, as a, 710 n. (b).
setting down cause for hearing upon, 709.
signature of counsel to, 708; defendant to, 708.
 attestation of, when put in without oath, 708.
sworn, how, 708.
withdrawal of, when permitted, 709.

DISCOVERY,

action, when restrained, till given, 1628.
agent, 1825 n. (a).
alien, when required from, at suit of the Crown, 5.
 whether devisee is, must be given, 568.
allegation of facts as to which discovery is sought, form of, 360; materiality, 570.
answer to part of, accompanied by plea to relief, bad, 625, 626.
answer, objections to, when raised by answer, 582, 716-723.
 (See ANSWER.)
Attorney-General, from, at suit of Crown accountant, 134.
Bank of England, when required from, 147 n.
burdensome, 720 n. (a).
case and evidence of defendant, plaintiff not entitled to, 579 and n., 580 and notes.
 unless common to both, 580.
Common Law courts, in, 1625; concurrent jurisdiction of Court of Chancery, as
 to, not abrogated, 1625.
corporation, member or officer of, made defendant for purpose of, 143, 144, 296, 822,
 878.
costs on bills of, 774, 810, 1457 and n.
demurrer to, 547, 562-581.
 (See DEMURRER.)

denial by answer of plaintiff's title does not relieve defendant from obligation to
 give discovery, 721, 722.
disclaimer, defendant not protected from, by, where costs prayed, 707.
dismissal of bill on submission to plaintiff's demand not ordered where discovery
 sought, 795.
documents, of, in the case of pleas, 621-623.
documents, when ordered, though production cannot be compelled, 1826.
extent to which it may be required, 579, 580.
facts, concerning which it is to be sought, how to be alleged, 360.
foreign court, 562 n., 1556 n.
foreign state or government, when required from, 19 n., 141.
fraud, extent of, in cases of, 566.
fraudulent dealings, discovery must be given, although it would render the defendant
 liable for, 564, 565.
identical with relief, fact that discovery would be, not a reason for refusing to give
 722 n.
illegitimacy of child, as to, when parent bound to give, 564.
infant, by, 74 n.
injurious, 579 n.
limited to party's own case, 579 n.
married woman not made a defendant to obtain, against her husband, 184.
material, in any way for suit, must be given, 570.
moral character, discovery must be given, although it would expose defendant to
 reflections on his, 564.
negative plea, in case of, 619.
opponent's title or case, 579 n.
parties, only from, 581 n., 991 n.

[The references are to the star paging.]

DISCOVERY—continued.

perpetuate testimony, extent which it may be required in suit to, 1573.
 physical examination, 1556 n. (a)
 plea, in case of, 615–625.
 plea to, 680.

(See PLEA.).

stated account, when not a bar to, 686.

venue, 1558 n. (a).

vexatious, 720 n. (a).

witness, objection to discovery, on the ground that defendant is, cannot be raised by answer, 300.

DISCOVERY (BILL OF), 1556–1559.

action in aid of, or of defence to, 1556.

injunction to restrain, when granted in, 1556, 1672.

affidavit, when annexed to, 392, 1558.

alien enemy, cannot be filed by, 51.

allegations of, 570 n., 1557.

amendment of, by adding plaintiff, or prayer for relief, irregular, 407, 408, 1559.

ancillary relief, may be prayed for, by, 547, 548, 1556, 1558.

answer, effect as evidence, 1559 n.

arbitration, in aid of compulsory, 1556, 1557.

bankrupt, when it may be filed by, 58; when against, 157.

costs of, 774, 810, 1457, 1558, 1559.

(See Costs.)

defendant, when ordered to pay part of, 774, 1559.

Crown by, to discover birthplace of alleged alien, 5.

demurrer to person of plaintiff, in, 556.

foreign court, to aid suit in, 1556 n.

form of, 1557.

fraud, in cases of, 324 n., 328 n.

hearing not brought to, 810, 1558.

infant, in aid of new defence by, 173.

injunction to restrain proceedings in another court, in, 1556, 1557, 1623, 1664, 1672; form of order for, 1678.

dissolution of, when ordered, 1678.

evidence on application for, 1672.

interrogatories must be filed before it is granted, 1557, 1664.

Law, in aid of proceedings before Court of, 1556.

leave of court required for, after order for issue, with production of documents, 1113, 1114.

limitations, plea of statutes of, to, 640, 1559.

lunacy or idiocy of plaintiff, objection may be taken on ground of, 84.

nature of, 1556.

oath, waiver of, 547 n.

parties to, 1557, 1558.

parties, want of, not an objection to, 290.

penal consequences, does not lie, where discovery would subject defendant to, 1557.

perpetuate testimony, bill to, not convertible into bill of discovery, 1575.

personal representative, when not necessary party to bill for discovery of real assets, 283.

plaintiffs not added to by amendment, 405.

pleas to, 680.

prayer of, 547, 1557, 2047 n.

Privy Council, in aid of proceedings before, 1558.

pro confesso, proceedings under statute, to take bill, against privileged defendant, 497, 530; application for, how made, evidence and effect of order, 497, 530 n., 531, 1559.

Probate, Court of, in aid of proceedings in, 553, 1557.

proceedings in another court, in aid of, 1556.

parties to, and averments in, 1557, 1558.

prosecution, not dismissible for want of, 786, 810, 1457, 1558.

tort, personal, does not lie in aid of action for, 1557.

relief, cannot properly pray for, 547 n., 548 n.

repugnant statements in, not admitted by demurrer, 545.

title-deeds, of, certainty necessary in allegations of, 370, 371.

where court will grant relief, on material discovery elicited, although it might have been obtained at law, 548 n.

[The references are to the star paging.]

DISCOVERY (CROSS-BILL OF),
 answer to, 840, 1555; costs of, 1556.
 costs of, 1458, 1555, 1559.
 rare occurrence, of, now, 1558.

DISCREDIT OF WITNESS,
 examination for purpose of, 1100-1104.

how far party may discredit his own witness, 1100, 1101.
 proof of contradictory statement of adverse witness, 1101.
 ordering witnesses out of court, 1101.
 cross-examination, 1102.
 as to previous statements in writing, 1102.
 as to offence imputed to witness, 1103.
 questions to impeach, 1108.

DISENTAILING DEED,

payment out to tenant in tail, ordered without, 99 n., 1802.

DISMISSAL OF BILL, 790-800.

accounts and inquiries, after decree for, 793, 810, 811.
 adequate value, for want of, 829.
 amendment of bill, after order for at the hearing, 804.
 amendment of bill, after service of notice of motion for, not of course, 411, 412, 416,
 804.
 appeal from order overruling demurrer, pending, when irregular, 601.
 assignment by defendant after bill filed, in case of, 791.
 bar to another suit, when, 659.
 when matter of bill has been passed upon, 659 n.
 bill and answer, on neglect to reply, after hearing on, 983; may be pleaded, 983, 984.
 bill and answer at hearing on, costs on, 982.
 class suit, effect of, on, 244.
 conditional order for, 856; made absolute on *ex parte* motion, 1598.
 consent, by, application for, how made, 795.
 co-plaintiff, as against, on his own application, 792.
 costs of former suit for same matter, on neglect to pay, 796.
 costs on, defendant when ordered to pay, 1404, 1427 n.
 costs, without, on plaintiff's application after appearance, 791; because defendant
 might have demurred, 315 n., 542, 1394; or pleaded, 603, 1394.
 costs on, when plaintiff allowed, 1405, 1427.
 cross-bill, effect on, 1553 n.
 decree, after, only by consent, 798; not in class suit, even then, 244, 794, 795.
 disavowal of suit, upon, by co-plaintiff, 309, 792.
 disclaimer, after, 709.
 election, in cases of, 815-818.

(See ELECTION.)

enrolment of decree for dismissal, when vacated, 1026.
 equity, for want of, 557 n.
 evidence in suit, when admitted in another suit after, 870.
 final order for, when necessary, 995.
 foreclosure suit, in, on payment of debt and costs, 794.
 further consideration, at, 1870, 1371.
 further hearing after trial at, 1148.
 hearing, at, effect of, 993.
 infant's cross-bill, of, effect of, 174.
 infant's suit, of, because not beneficial, 71.
 information and bill, in case of, 11.
 interlocutory injunction, dissolved by, 1675.
 issue, after order for, at hearing, 798; not after trial, 793, 794, 1120.
 limitations, dismissal of bill not a bar to statute of, 643.
 married woman, of, because bill filed without her consent, 110.
 mutual mistake, when bill filed under, 791.
 next friend of married woman, on death of, and non-appointment of new one, 112.
 next friend, when bill on behalf of infant filed without, 68.
 non-appearance of plaintiff at hearing, for, 979.
 parties, on neglect to add, order for, is final, 995.
 parties, for want of, when expressed to be without prejudice, 994.
 payment out, ordered after, 1799.
 plaintiff's application, on, 790-794.
 act of court, when plaintiff misled by, 791.
 appeal from order overruling demurrer, irregular after notice of, if by order of
 course, 601, 790.

[The references are to the star paging.]

DISMISSAL OF BILL — *continued.*

- appearance, before, 790; after, 790.
- application for, how made, where as of course, 790, 791; where special, 791.
- bankruptcy of defendant, on, 158.
- class suit, in, 244, 790 n.
- compromise, on breach of, irregular, 790.
- costs payable on, 790, 792.
 (See *Costs.*)
- costs, without prejudice to, how they should be ultimately borne, 792.
- cross-bill, of, when not of course, 1553.
- decree, before, with costs is, of course, 790, 792.
- dismissal for want of prosecution against some defendants, after, 792.
- inquiry into title, order for, a bar to, 1216.
- issue, after order for, but before trial of, 793, 1119.
- order for, when of course, 790, 792; when special, 790, 791.
- pauper plaintiff, by, 39, 792.
- service of notice of motion for, 791.
- setting down of cause after, may be pleaded, 659, 793.
- plea of, 659, 687, 793, 979, 983, 984, 993, 994.
- plea of decree, after, 661.
- plea of pending suit, after, 659.
- plea, after filing, 696, 812.
- plea, on neglect to set down or reply to, 696, 812; when irregular, 696.
- prejudice, when expressed to be without, 790 n., 994.
- prosecution, for want of, 659 n., 794 n., 801 n.
- receiver's accounts, passed after, 1754.
- redemption suit, in, on payment of debt and costs, 795.
- restoration of cause, after order for, 597.
- security for costs, on omission to give, 85, 86.
- setting down of cause, dismissal of bill after, may be pleaded, 659, 793.
- specific performance, for, when expressed, to be without prejudice, 994, 995.
- submission to satisfy plaintiff's demand, and pay costs, on, 235, 794, 1380.
 plaintiff's application, not ordered on, unless by consent, 795.
- subsequent decision or matter rendering suit useless, in consequence of, 791.
- undertaking as to damages, not vacated by, 1666.
- undertaking not to bring an action, upon, 995.
- useless when defendant has rendered suit, 791.

DISMISSAL OF BILL (ON ABATEMENT), 812-815.

- bankruptcy of sole plaintiff, on, 63, 64, 808, 814; of co-plaintiff, 814.
- costs on, 64, 818, 814.
- creditors' deed, after execution of, by plaintiff, 63 n.
- death of defendant, on, 794.
- death of sole plaintiff, before decree, on, 812; of co-plaintiff, 813.
- marriage of female sole plaintiff, on, 813.
- revive suit, on neglect to, 813.

DISMISSAL OF BILL (FOR WANT OF PROSECUTION), 801-812.

- abandoned motion, costs of, not obtainable after, 812.
- abatement, irregular, pending, 814.
- abatement by death of co-defendant, in case of, 810.
- adjournment, with liberty to amend, motion for dismissal, after, 804.
 without any subsequent application, when, 804.
 form of notice of motion, when subsequent application required, 804, 805.
- amend bill, order of course for, irregular after service of notice of motion for, 412, 416, 804.
- amend bill, effect of order for, not acted on, on defendant's right to, 801.
- amendment of bill, order for, a bar to the motion, 804, 805; costs in such a case, 804.
- answers of other defendants still outstanding, circumstance that they are, no defence to the motion, 809.
- bankruptcy of defendant, after, on his motion, 159, 808, 814.
- bankruptcy of sole plaintiff, not ordered on, 814; of co-plaintiff, 64, 814.
- conditional order for, death of defendant, effect of, on, 1544.
- contempt, defendant in, for non-payment of costs of attachment for want of answer, cannot move for, 806.
- costs of motion for, 792, 808-808, 807, 808, 811, 812.
 of irregular motion for, 805; of motion intercepted by step taken by plaintiff, 804.

(See *Costs.*)

[The references are to the star paging.]

- DISMISSAL OF BILL (FOR WANT OF PROSECUTION) — *continued.***
- creditors' deed, not ordered after execution by plaintiff of, 64 n.
 - cross-bill, pendency of, when not an answer to motion for, 1555.
 - death of co-defendant, after, 810; of co-plaintiff, 810.
 - death of plaintiff, public officer, 818.
 - decretal order, a bar to, 806, 811.
 - defence to motion, what is not, 809.
 - defendant moving, bill is only dismissed as against, 807.
 - delay occasioned by difficulties in proceeding with the suit, when not an answer to the motion, 809, 810.
 - discovery, of bill of, none in case, 810, 1457, 1558.
 - effect of, 659 n., 794 n., 801 n., 986 n.
 - enrolment of order for, 812.
 - hearing of motion, 807.
 - indulgence to plaintiff, case for, how made, 809.
 - inquiry into title, order for, a bar to the motion, 806, 811.
 - intercepted motion for, should not be brought on when costs of motion tendered, 805.
 - interlocutory injunction or order not a bar to motion for, 806.
 - interrogatories for examination of plaintiff, filing of, not a bar to the motion, 806 n.
 - motion for, how prevented, 809.
 - motion for, not prevented by interlocutory order or injunction, 806.
 - or neglect to give notice of filing answer, 755.
 - motion for, irregular, when proceedings stayed till plaintiff's contempt cleared, 806.
 - negotiations with the defendant, when an answer to motion, 810.
 - notice of filing answer, neglect to file not a bar to motion for, 806, 810.
 - notice of motion for, for too early a day, not cured by postponement, 805.
 - order, usual, made on motion, 807.
 - drawn up, how, 807.
 - form of, dismissal only against defendant moving, 807.
 - when defendant undertakes to speed cause, 808, 809.
 - outlawry of plaintiff, in case of, 810.
 - perpetuate testimony, not ordered in suit to, 810, 1578.
 - pledged to new bill, cannot be, 660, 811.
 - production of documents, application for, when not an answer to motion, 809.
 - receiver, *pendente lite*, not ordered in suit for, 810.
 - replication filed same day, order for dismissal overrides, 806.
 - replication, filing, a bar to the motion, 804, 833; costs in such a case, 804, 833.
 - replication, for making default in filing, 833.
 - restoration of bill, after, 809, 979; not directed to raise question of costs, 809.
 - restoration of bill, after, 809; not directed to raise question of costs, 809.
 - right to, depends on state of proceedings as to defendant moving, 803.
 - stay of proceedings until clearance by plaintiff of his contempt, motion to dismiss irregular after, 806.
 - stay, as to co-defendants, of proceedings, when not an answer to motion for, 809.
 - time for motion for, 800–808.
 - amendment and further answer required, in case of, 803.
 - amendment and no further answer required, in case of, 802.
 - answer not required and none put in, when, 803.
 - answer, sufficient, after, 801.
 - answer, voluntary, after, 802, 803.
 - evidence, after closing of, 801.
 - motion for decree, after service of, 802, 824.
 - plea, after undertaking to reply to, 696, 801.
 - traversing note, after filing of, 801.
 - title, order for reference as to, a bar to, 806.
 - vacations, when not reckoned in, 802; when reckoned in, 803.

DISMISSAL OF INFORMATION,

prosecution, for want of, only ordered when there is a relator, 16.

DISQUALIFICATION. (See DISABILITY.)

DISSENTING CHAPEL,

appointment of minister of, when restrained, 1653.

DISSOLUTION OF INJUNCTION. (See INJUNCTION.)

DISSOLUTION OF PARLIAMENT,

appeal to House of Lords not affected by, 1496.

[The references are to the star paging.]

DISTRESS,

receiver, by, in whose name put in, 1748.
leave to make, necessary, and how obtained, 1748.

DISTRIBUTION OF ASSETS,

advertisement for creditors, after, effect of, as to parties, 250, 1206.
under decree, party making, protected, 1207.

persons equally entitled may file another bill against those who have partaken of, 1206, 1207 and n.
creditor not bound by account of assets taken in suit instituted by a single creditor, not on behalf of himself and others, 1207.
creditor bound, whose claim has been investigated and rejected, 1208.
creditor seeking a redistribution must proceed against all who have partaken, 1208.

DISTRINGAS (WRIT OF),

alias and pluries, 477.

generally, 477.

amounts levied under, 477 n.

issue, preparation, and return day of, 477 ; filing, of, 477.

answer of corporation aggregate, to compel, 497.

appearance of corporation aggregate, to compel, 477.

costs, to enforce payment of, by corporation aggregate, 1455.

decree or order, to enforce obedience to, by corporation aggregate, 1067.

stock, to restrain transfer of, 1691-1693.

application for, how made, 1691 ; affidavit of title, 1691.

discharge of, application for, how made, 1698.

when put on wrong fund, 1698.

effect of, in restraining transfer without notice, 1698.

injunction, does not operate as an, 477 n.

jurisdiction to issue, and against what companies, 1691.

next friend required, if applicant under disability, 1691, 1692.

notice from bank on request to transfer, 1692.

preparation and issue of, 1692 ; return day of, 1692.

restraining order may be subsequently issued, 1698.

service of, how effected, 1692.

DIVIDENDS,

bankruptcy, in, treated as payments or accounts, in proof under decree, 1226.

funds in court, on, how received, 1791.

investment and accumulation of, 1789, 1790.

payment of, 1807, 1808.

payment of, when restrained, 1652.

DIVORCE,

effect on wife's property, 122, 128 notes.

DIVORCE A MENSA ET THORO,

effect of, on husband's interest in wife's term, 128.

on his power to release her chose in action, 122, 123.

DIVORCE (COURT OF),

demurrer, that it is the proper tribunal, 553.

order of, cannot be registered as a judgment, 1038 n.

restraining proceedings in, 1626 n.

receiver appointed, pending litigation in, 1726 n.

DOCK,

tolls, receiver of, appointed, 1731.

DOCKET,

of enrolment, 1022-1024.

(See ENROLMENT.)

exemplification of decree, or order, for, 1068.

injunction, for writ of, 1674.

DOCUMENTS,

admission of, supplemental answer not permitted for purpose of qualifying, 781.

admissions, used as, must be pleaded, 855.

affidavit as to, 1820-1822.

answer as to, when plea accompanied by, 621, 622.

(See AFFIDAVIT.)

answer, description of, in, 725 ; schedule used for, 727.

reference to, in, unnecessary, where defendant has lost his interest, 724.

charge of, answer as to, in support of plea of purchase for valuable consideration without notice, 678.

[The references are to the star paging.]

DOCUMENTS — *continued.*

- delivery of, out of court, 1888.
- delivery of, when legal title to, must be established before application in equity for, 1558.
- deposit of, in court, how effected, 1887.
- discovery of, affidavit when annexed to bill praying, 392, 1558.
- discovery of, not required in administration suit when assets admitted, 718.
- discovery of, when not required from person having benefit of covenant for production of, 1827.
- discovery of, bill of discovery may pray for, 548.
- discovery of, not required when defendant sets up an independent title, and they only make out his own title, 549.
- discovery of, when ordered, though production cannot be compelled, 1826.
- discovery of, in case of pleas, 621-624.
- evidence, admitted as, though not pleaded, 855.
- exceptions for insufficient answer to interrogatory as to, discouraged, 485 n., 760 n.
- execution, proof of, by attesting witness, when not necessary, 880.
- exhibits, what may be proved as, at hearing, 881.
- foreign, proof of, 864.
- hæc verba*, when set out in answer in, 725; when in bill, 363.
- interrogatory as to, 484, 485 and n.; exceptions for insufficient answer to, discouraged, 485 n., 1818, 1819.
- legal, filed or deposited in colonial or foreign court, proof of, 863, 864 and n.
- mistated, admitted by demurrer, 544.
- notice to admit, 849, 880.
- possession of, when considered to be in party's own, 725, 1827.
- possession of, answer as to, when abroad, 725, 1827.
- private, thirty years old, prove themselves, 878.
- production of, 872, 1817-1839.

(See PRODUCTION OF DOCUMENTS.)

- prove themselves, those which do, 862-874.
- prove themselves, which do not, how proved, 874-881.
- public, certified copies of, when admissible, 864.
- public, when received without proof of seal or signature, 865.
- reference to, in answer, effect of, 725, 838; on right to production, 1882.
- schedule of, bill of discovery may pray, 548.
- secondary evidence of, when admitted, 878.
when it might convict party of crime, 879.
- solicitor's hands, in, considered to be in custody of the party, 725.
- solicitor's lien on, 1841-1845.
- stamp on, objection for want, how remedied, 880.
- statement of, professedly inaccurate, when not binding on plaintiff, on demurrer, 544.
- stop order on, after deposit in court, 1686.
- written, how proved, 879.

DORMANT ACCOUNTS,

- investigation of, 1815; payment out thereon, 1815, 1816.

DOUBLE ASPECT (BILLS WITH),
what are, 884.

- double pleading in, 607 and n.

DOWER,

- arrears of, account of, in suit for, 1166.
interest on, not allowed, 1166.
limitations (statute of), when applicable to suit for, 653, 1166.
assignment of, how effected, 1166.
costs of suit for, 1166.
decree to assign, proceedings under, 1165, 1166.
disputed right to, proceedings in case of, 1165.
election to take legacy in lieu of, parties to suit to compel, 282.
inquiry as to husband's lands, in suit for, 1166.
jurisdiction of Court of Chancery, in cases of, 552.
payment in respect of, a just allowance, when, 1283.
rents, account of, in suit for, 1166.
sequestration, not prejudiced by, 1080.

DRAMATIC AUTHOR,

- breach of covenant by, injunction to restrain, 1654.

DRAWER,

- of bill of exchange, when not necessary party, 207.

[The references are to the star pagina.]

DRUNKENNESS,

charge of habitual, particular acts of drinking provable under, 853.

DUKE OF CORNWALL. (See CORNWALL, DUKE OF.)

DUMB PERSON,

affidavit of, how taken, 897.

answer of, how taken, 747.

DURANTE MINORE ÆTATE (ADMINISTRATOR),

a necessary party, unless he has fully accounted, 250.

DURHAM (BISHOP OF),

palatine jurisdiction of, vested in the Crown, 554 n.

DURHAM (COUNTY PALATINE OF),

demurrer, because subject of suit within jurisdiction of, 554.

office copy of record of court of, provable as exhibit at hearing, 882.

return of attachment issued into, how compelled, 470.

DUTIES,

bill to establish general right to, against several defendants, when not multifarious, 841.

suit to establish right to, may be brought against some members of the class liable, 274.

EASTER VACATION.

commencement and termination of, 412.

ECCLESIASTICAL BENEFICE,

presentation to, statute of limitations applicable to, 654.

ECCLESIASTICAL CORPORATION,

limitations, statute of, applicable to demands by, 654.

ECCLESIASTICAL COURT,

punishment in, demurrer because discovery would expose defendant to, 563, 564.

records of, proved as exhibits at hearing, 882.

ECCLESIASTICAL LAW,

judicially noticed, 546.

EFFECTS,

delivery out of court, how effected, and certificate of, 1812; to personal representatives, 1813, 1814.

description of, in decree or order, 1005, 1783, 1784.

EJECTMENT,

lessee, party to bill to restrain, when, 209.

EJECTMENT BILL,

discovery, in case of, 721 n.

does not lie, although defendant alleged to have possession of title-deeds, 551, 552.

double pleading, when allowed in, 609.

mortgagees, costs of, 827, 828.

receiver, against, leave to defend necessary, 1749; inquiry as to, 1744.

tenant, when necessary party to bill to restrain, 209.

ELECTION, 815-818.

acts that will determine, 684 n., 815 n., 817 n.

action and suit, between, when compelled, 634 and n., 815, 1618.

application for, how made, 817.

costs on, 816-818.

Crown may elect to sue in any court, 5.

declaration that defendant has made, not granted under prayer that he should make it, 878, 879.

decree, order for, not made after, 817.

dismissal, after, cannot be pleaded to new suit, 659, 817.

foreign court, where plaintiff also suing in, 815.

fraud, in cases of, 815 n., 817 n.

inquiry whether suit and action for same matter, 817.

married woman, by, 122 n.

mode and time of making, 815 n., 817.

mortgagee, not put to, 815.

order for, effect of, 816.

benefit of, loss after decree, but special order may be made, 815, 1618.

discharge of, application for, 817.

[The references are to the star paging.]

ELECTION — *continued.*

- injunction, writ of, usually not issued, 816, 817, 1618.
- special, when, 817.
- plea, or joint plea and answer, defendant not entitled to after, 691, 816.
- proof of debt in administration suit, no election not to proceed at law, 817 n.
- service of order, 816.
- special, 815.
- specific performance, in cases of, 815.
- stay of proceedings, pending inquiry, in case of, 817.
- time for application, 816.
 - amended bill, in case of, 816.
 - answer, where not required, 816.
 - exceptions to answer, in case of, 816.
 - extension of, how procured, 817.
 - reasonable time allowed, 816 n.
- vendor, in cases of proceedings by, for unpaid purchase-money, 815.
- widow, parties to suits to put her to, 282.

ELEEMOSYNARY CORPORATIONS.

- limitations, statutes of, applicable to demands by, 654.

ELEGIT (WRIT OF),

- arrest under attachment, right to, not lost by, 1065.
- corporation aggregate, against, 1067.
- costs, to enforce payment of, 1451, 1456.
- decree or order, when issued to enforce, 1068.
- equitable interests, 1068 n (a).
- execution of, 1064; fees for, 1064.
- fee on, 1068 n.
- filing of, 1064.
- indorsement on, 1064.
- Parliament or peerage, against person having privilege of, 1066.
- payment into court not enforced by, 1068 n.
- preparation and issue of, 1063; date of entry must be written on order, 1016.
- receiver, relation to, 1035 n., 1068 n., 1755.
- receiver at instance of creditors in possession under, 1718 n.
- return of, 1064.
- tenant by, bound to account, 1064, 1065.

ENGINEER,

- assistance of, how obtained, 988.

(See EXPERT.)

ENGRAVINGS COPYRIGHT ACTS,

- allegations under, in bills under, 386.

ENROLMENT,

- bargain and sale, of, need not be alleged in bill, 965.
- decrees and orders, of, 1018–1028.
 - no such proceeding in Massachusetts as the signing and enrolling in English courts, 1018 n., 1019 n.
 - in Mississippi and other States, 1018 n., 1019 n., 1021 n., 1022 n.
 - abatement, notwithstanding, 1022.
 - appeal in Chancery, not allowed after, 1019.
 - appeal to the House of Lords, necessary preliminary to, 1019, 1024, 1492.
 - caveat, against, 1024, 1025; effect of, 1024; entry of, 1024.
 - fee on, 1024 n.
 - prosecution of, 1025.
 - time for, 1025.
 - as to New Jersey and Massachusetts, 1024 n.
 - completed, when, 1025.
 - costs of, 1028.
 - dismissal for want of prosecution of order for, 811.
 - docket of, 1022, 1023.
 - deposit of, and engrossment of, 1023; form of, 1022.
 - inspection of, by record and writ clerk, 1022; fee on, 1022 n.
 - signature to, how obtained, 1023.
 - drawn by whom, 1022 and n.
 - effect of, 1018, 1019; on subsequent order, 1028.
 - foreclosure, enlargement of time for, after enrolment, 1027.
 - Irish Court of Chancery or Landed Estates Court, of order of, in English Court of Chancery, 1068.

[The references are to the star paging.]

ENROLMENT — continued.

- leave for, when necessary, 1020.
- application for, how made, 1020; burden of proof, and costs on, 1020.
- order, form of, 1020.
- nunc pro tunc*, abolished, 1020 n.
- orders which may be enrolled, 1021.
- prevented, how, 1024–1026.
- rectification of order, when permitted after, 1030, 1031.
- rehearing of decree or order not allowed after enrolment, 1019, 1475, 1477.
- time for, 1020; enlarged when, 1020, 1021.
- vacated, when, 1025–1028, 1026 n., 1031 n.
- appeal to the House of Lords, when leave to apply for, given at hearing of, 1026 n.
- default, where decree for dismissal taken by, 1025.
- discretionary grounds, when for, 1026.
- irregularity, for, 1025.
- by Lords Justices, but not by Vice-Chancellor, 1028.
- mala fides*, or surprise, in case of, 1026.
- neglect of solicitor, in case of, 1026.
- pro confesso*, when bill taken, 1028.
- for other reasons, 1026 notes and 1027 n.
- with great caution, 1027 n.
- recognizance, of receiver's, 1789.
- how effected, 1739; order for, when necessary, 1739.
- fee on, 1789 n.
- vacated, how, 1765.

ENTRY,

- breach of condition, for, in husband's assignment of wife's term, effect of, 128.
- decrees and orders of, 1016, 1017.
- abatement of cause after, 1017.
- date of, when to be marked, 1016.
- enlargement of time to answer, or order for, 741.
- lost decree or order, of, 1017.
- nunc pro tunc*, order for, how obtained, 1016; when made, 1017.
- omission of, effect of, 1016.
- pro confesso*, made on a bill taken, 527.
- time for, 1016.
- demurrer, of, with registrar, abolished, 594.
- evidence of, in decree or order, 984, 1008, 1004.
- defendant not heard, where, 1004.
- rejection of evidence should be noticed in, 1003.
- plea, of, with registrar, abolished, 692.

ENVOY (BRITISH),

- answer, when sworn before, 745.

EQUERRY,

- salary of, not taken under sequestration, 1058.

EQUITABLE DEFENCES,

- common law courts, in, 1625.

- concurrent jurisdiction of Court of Chancery not abrogated, 1625.

EQUITABLE ESTATE,

- trustees having, when necessary parties, 206.

EQUITABLE INTEREST,

- assignor, of, when not a necessary party, 206.

EQUITABLE WASTE. (See WASTE.)

EQUITY,

- demurrer, for want of, 549.

- denial of plaintiff's by answer, does not relieve defendant from obligation to answer fully, 720.

(See DEMURRER.)

- offer to do, demurrer for want of, 885, 562, 587.

(See DEMURRER.)

- plea, that subject-matter not within jurisdiction of, 628.

EQUITY (COURTS OF),

- application of statute of limitations to, 649.

- courts of conscience, 857 n.

- probate jurisdiction, 553 n.

[The references are to the star paging.]

EQUITY TO A SETTLEMENT. (See MARRIED WOMAN. SETTLEMENT, EQUITY TO.)

ERROR,

account, not opened for, but leave given to surcharge and falsify, 667.
order not made where error admitted and corrected before suit, 668.
certainty, required in bills for relief, on the ground of, 371.
decree, in, not corrected at further consideration, except in charity cases, 1868.
correction of, where clerical, 1028-1031, 1575 n.

 appeal or rehearing, by, 1459-1505.

(See APPEALS AND REHEARINGS. APPEALS TO THE HOUSE OF LORDS.)

 bill of review, by, 1575-1584.

(See REVIEW, BILL OF.)

infant, what shown as cause, by, 164, 165; how shown, 173.

 foreclosure suit, in, 167, 171, 172.

demurrer for, to bill of review, 1583.

law, in, shown under leave to surcharge and falsify, 668.

sale under decree not invalidated by, unless in substance, 168.

stated account, in, answer and averments in plea of the account, 667.

 specification of, necessary, but all need not be proved, 668.

ERRORS EXCEPTED,

stated account, effect of, in, 666.

ESCAPE,

sergeant-at-arms, from custody of, effect of, 1049 n.

sheriff's liability for, 469 n., 1046.

ESCHEAT,

person claiming by, necessary party to suit to establish will, 233.

ESTATE (PERSON TO REPRESENT.) (See REPRESENTATIVE OF THE ESTATE.)

ESTATES,

of different persons, administered in same suit, when, 336.

ESTOPPEL,

conduct, by, 645 n. (a).

disclaimer, by, 709 n. (a).

pleading, 855 n., 2101 n.

EVICTION,

receiver, by, leave to take proceedings for, necessary, 1749.

EVIDENCE, 836-961.

account, in suit for, 856, 857.

Accountant-General's power of attorney, of execution of, 1810.

additional accounts or inquiries, on application for, 1261.

adjudication in bankruptcy, of, 65.

administration suits, in, 857.

administrator, in suit against, 857.

admissions, by, 836-849.

(See ADMISSIONS.)

advancement of infant, on application for, 1362.

affidavit, by, 891-903.

(See AFFIDAVIT.)

agent to collect, communication to, privileged, 576.

amendment of plea, on application for leave for, 704.

answer, not read as, by defendant, where issue joined, except by consent, 848; or
on question of costs, 843.

 how made evidence, 737 n., 840, 843 n.

 in issue out of Chancery, 845, 1116 n.

answer of co-defendant, read as, when, 821, 841, 842, 843.

 in interpleader suit, 843.

 when cannot be read against, 841 n., 842 and n.

 although transfer from one to the other of his interest in controversy, 841 n.,
 842 n.

 when can be read in favor of co-defendant, 841 n.

appeal motions, 1488, 1603; new evidence on, when allowed, 1488, 1603.

 costs, where successful on new evidence, 1488, 1603.

appeal petitions, 1488, 1612; new evidence, when admissible in, 1488, 1612.

appeals and rehearings in Chancery, on, 1485-1488 and notes.

 answer not made, by reading as admission below, 1487.

 decree, new evidence not usually admissible on appeal from, 1485 and n.

 exceptions, 1486, 1487; credit of witness, to impeach, 1487.

(The references are to the star paging.)

EVIDENCE — continued.

- de bene esse*, where admitted to be read, 1487.
exhibits, to prove, 1487.
 omission by inadvertence, in hearing below, in case of, 1487.
 examination of party or witness by court, 1488.
 judge's notes of *verba voce* evidence in court below, 912, 1488.
 appeals to the House of Lords, on, 1504, 1505.
 new, not allowed on, 1499, 1504.
 received below, when it may be objected to, 1504.
 rejected below, when it may be looked at, 1504, 1505.
 appearance, on application by plaintiff for leave to enter for defendant, 460, 461.
 arbitration, on making submission rule of court, 1858.
 arbitrator of, how far admissible, 1860 n.
 assistance, on issue of writ, of, 1062.
 to enforce delivery of possession to purchaser, 1279.
 to enforce delivery of possession to receiver, 1742.
 attachment, on issue of, 465, 489, 1046, 1453, 1742.
 answer, for not putting in, 489 and n.
 appearance, for not entering, 465.
 attornment to receiver, for default in making, 1743.
 costs, for non-payment of, 1453.
 decree or order for not obeying, 1046.
 attornment to receiver, on motion for, 1742.
 bankruptcy, taken before, read against assignees 159.
 best, must be given, 861.
 bill of discovery taken *pro confesso*, reading as, against privileged person, 497, 580,
 1559.
 bill and answer, at hearing on, 828, 881.
 bill read by plaintiff, as, when, 888.
 burden of. (See *ONUS PROBANDI*.)
 Master, how adduced before, 1187-1198.
 closing, time for, 1191.
 general rules of, applicable to proceedings before, 1188 and n.
 charge of, disused, except to procure admission, 326 n.
 charging order, on application for, 1040.
 claim, under decree, in support of, 1210.
 closing of, time for, 889.
 amendment of bill, except to add parties, after, irregular, 416.
 enlargement of, application for, how made, 890, costs of application, 890.
 cross-suits, in case of, 976.
 principles on which evidence received after expiration of, 889, 890.
 leave for, how obtained, and service of application, 890.
 committal for breach of injunction, on application for, 1686.
 committal of receiver for not bringing in his account or paying in balance, on appli-
 cation for, 1755.
 co-defendant, not to be used against without notice, 891.
 contradictory, issue when directed in consequence of, 1072.
 costs of, 837, 941, 1004, 1394, 1555, 1556; when taken out of the jurisdiction, 919.
 costs, evidence on questions of, 1368.
 costs, amount of evidence, 1878 n.
 cross causes, order to use in one, evidence taken in the other, 868, 975, 1552; avail-
 able by opposite party, 671, 1553
 after closing of evidence in original suit, 1552.
 enlarging time for, 1552.
 costs of, when both dismissed, 1555, 1556.
 motion for decree, when one cause heard on, 823.
 custom of, 860.
de bene esse, when taken, 932-941.
 (See *DE BENE ESSE EXAMINATION*.)
de bene esse, on application to examine witness, 936, 937.
de bene esse, on application to use evidence taken, 940.
 decree against infant, on application to make absolute, 172.
 decree, how taken after, 688.
 decree, sufficient must be proved to entitle plaintiff to, 856.
 decree or order, in another suit, when admissible as, 867.
 defect, in, how remedied, 857, 859.
 application for leave to supply, how made, 858.
 inquiry, when directed, 858.
 partial decree, when made, 859.

[The references are to the star paging.]

EVIDENCE — *continued.*

- defendant's, plaintiff not entitled to discovery of, unless common to both, 580.
demurrer to, 314 n.
depositions in another suit, when admissible, 867-871.
 co-defendants, when between, 869.
 dismissal of bill, after, 870.
 motion for decree, when cause heard on, 870.
 office copy, duly signed, read from, 871.
 order to read necessary, 867; how obtained, 871.
 opposite party, available by, 871.
 witnesses need not be dead, 870.
depositions of witnesses, in other courts, introduced, how, 866.
 order to read necessary, 866.
discharge of husband, in custody for want of joint answer, on application for, 181.
dismissal of bill of married woman because filed without her consent, 110.
dismissal of bill for want of prosecution, on motion for, 807.
distringas, on issue of, for not answering, 497, 498.
 for not appearing, 47.
 for not obeying decree or order, 1067.
documentary, what is, 862.
documentary, which proves itself, 862-874.
documentary, which does not prove itself, 874-881.
documents admitted as evidence, though not pleaded, 855.
documents, secondary evidence of, when admitted, 878.
drunkenness, evidence admitted under general charge of, 858.
debit, on issue of writ of, 1064.
enlargement of time to answer, on application for, 740, 741.
entries in account-books, how far admitted as, 1228 and notes.
entry of, in decree or order, 984, 1002, 1003.
 (See ENTRY.)
executor, in suit against, 857.
exhibits, proving, at hearing, 881-885.
 (See EXHIBITS.)
ex parte, examination by, 888, 901.
facts, not noticed in the pleadings, evidence of, not admitted, 326, 361 n., 852, 860.
foreign law, 864.
 opinion of foreign courts, 864 n.
 law of other States, 864 n.
 decrees of other States, 867 n.
 not *ex officio* noticed, 864 n.
fieri facias, on issuing of writ of, 1064, 1456.
former mode of taking, 887.
fraud, of, must substantiate case as pleaded, 327.
further consideration, at hearing on, 1368, 1369.
general charge, evidence of what facts admitted under a, 853, 854.
guardian of infant, in support of application to appoint, 1358.
guardian of person of weak mind not so found, on application for, 1361.
guardian *ad litem*, on application by plaintiff for, of infant, 162, 475, 476.
 on behalf of infant, 161.
 for person of unsound mind, by plaintiff, 177, 178, 475, 476
 on behalf of person of unsound mind, 176; on appointment of new guardian, 176.
hearing, evidence taken at, may be used in Chambers, 1338, 1339.
hearsay not admissible, 861.
impertinence, 350 n.
improper, new trial at law on ground of admission of, 1125, 1126.
 objection must be taken at trial, 1127.
improper length of, costs occasioned by, 837, 1394.
infant, necessary evidence against, 170.
 taken before he was made a party, not read against him, 170 n.
injunctions, on application for, 1567, 1639, 1644, 1667-1670.
 breach of, on application to commit for, 1685.
 discovery, in suit for, 1557, 1672.
 dissolution of, on application for, 1676.
insanity, evidence where general charge of, 853; insane witness, 1098.
instrument not made evidence by mere reference thereto, 367.
insufficient, issue, when granted in case of, 1078.
interlocutory application upon, 888.
interpleader suit, in, 1568.

GENERAL INDEX.

[The references are to the star paging.]

EVIDENCE — *continued.*

- issue, should be confined to matters in, 852–860.
 - issue joined, how taken after, 888–891.
 - judge's notes of *viva voce*, authority of, 912, 1186; at law, 1137.
 - jurisdiction, to prove person out of, 152.
 - lease, an application for leave to grant, 1348, 1344.
 - leave to trustee to bring or defend action or suit, on application for, 1843.
 - legacy duty, of payment of, 1805.
 - letters, statement of, as evidence of agreement contained therein, 365.
 - lewdness, evidence where general charge of, 853.
 - lien, in suit to establish, 855.
 - lunacy, signed office copy of order or report admissible in, 871 n.
 - maintenance of infant, on application for, 1359, 1360, 1361.
 - maintenance of person of unsound mind not so found, on application for, 1861.
 - master, report of, 1299 n.
 - memorandum of service of, copy of bill, on motion to enter, 430, 431.
 - mode of taking, 887–891.
 - modus*, of, 860.
 - motion for decree on, 820–824, 888.
 - motions, on, 1597–1599, 1598 n.; oral, how taken on, 1598.
 - ne exeat regno*, on application for, 1706, 1707.
 - new evidence, new trial at law on ground of, 1134.
 - new evidence, admission of, on appeals, 1485, 1487.
 - appeal motions, in case of, 1488, 1608.
 - appeal petitions, in case of, 1488, 1612.
 - costs, effect of, on question of, 1490.
 - new next friend, on appointment of, of infant, 77; of married woman, 112.
 - new trial, on motion for, 1136, 1137.
 - non-access of, 564 n.
 - notice of, by whom to be adduced, 697, 698, 849.
 - notice, evidence where general charge of, 854.
 - objection to, how made, 1504.
 - official character of person before whom affidavit sworn abroad is taken, 892 and n.
 - official misconduct, evidence where general charge of, 853, 854.
 - one witness, of, decree not made on, against answer, unless corroborated, 843 and n., 844–848 and in notes.
 - onus probandi*, 849–852.
- (See ONUS PROBANDI.)
- where the bill charges a fact and the answer is silent, 837 n.
 - where the answer sets up matter in avoidance, 844 n.
 - death of parties, 850 n.
 - rests in general on party asserting the affirmative, 849, 850.
 - rule of convenience, 850 n.
 - regard to be had to substance, 850 n.
 - exceptions to general rule, 850, n.
 - rule as to burden of proof same at law and in equity, 850 n.
 - when *prima facie* case made by pleadings, 850.
 - when presumption of law in favor of one party, 851.
 - when question is of sanity, 851.
 - in case of wills, 851.
 - when lucid interval claimed, 852.
 - voluntary donation, and charge of undue influence, 852.
 - open to all parties, 919.
 - open biddings, on application to, 1286, 1287.
 - parties added, after time for notice of cross-examination, evidence not read against, 298–295, 405, 409.
 - payment into court, on application for, 1770, 1779, 1780, 1781, 1782.
 - payment out of court, on application for, 891 n., 1797.
 - of married woman's fund, 93, 94, 95, 96.
 - where marriage subsequent to order, 97, 98.
 - perpetuate testimony, how taken in suits to, 1574.
 - when, and how used, 1574; order to use, how obtained, 1575.
 - personal representatives, on payment to, 1808; on transfer to, 1818.
 - petitions, on, 1808.
 - photographs and photographic copies, 879.
 - pleading, erroneous, 686 n., 852 n. (a), 855 n.
 - plea, after filing of, 697, 698.
 - printed copies, read from, 981.
 - printed reports, 867 n.

[The references are to the star paging.]

EVIDENCE — *continued.*

- printing, 902, 903; motion for decree when cause heard on, 825.
proceedings in another suit, when admissible in, 867–871.
pro confesso, on application for order to take bill, 520, 521.
 against absconding defendant under statute, 456.
 under general order, 458–460.
pro confesso, on application to take bill of discovery against privileged defendant, 521.
production of documents, on application for, 1821, 1822, 1828.
purchase for valuable consideration, without notice, in support of plea of, 695.
receiver, on application for, 1785.
record, to explain, 659 n.
rejection of, should be noticed in decree or order, 1003.
rejection of, practice of House of Lords, in case of erroneous, 1504, 1505.
rejection of, new trial on ground of improper, 1124.
 at law, 1125; objection must be taken at trial, 1127.
replication to plea, when entered into by plaintiff after, 697.
reported, how, in Massachusetts, 912 n.
 expense of, 912 n.
reports of decisions, 867 n.
re-sale, on application for, 1282.
restoration of written bill, on motion for, 397.
restraining order, on stock, on application for, 1690.
review, on application for leave to file bill of, 1578.
sale by private contract, in support of application to confirm, 1293.
sanction of court to institution of suit, on application for, 310, 311.
secondary, when permitted, 878–880.
 (See SECONDARY EVIDENCE.)
separate answer of husband, on application for leave for, 180.
 when husband in custody, 180.
separate answer of wife, on application for by plaintiff, 179.
sequestration for want of answer, on issue of, corporation aggregate against, 477, 497.
 privileged person, against, 498.
sequestration for not appearing, on issue of, against corporation aggregate, 477,
 against officer of the court, 474; against privileged person, 464, 473.
sequestration for non-obedience to decree or order, on issue of, 1047, 1051, 1066,
 1067.
 attached and imprisoned, on sheriff's return of, 1047.
 corporation aggregate, against, 1067.
 detained on return of, by sheriff, 1047; by sergeant-at-arms, 1049.
 non est inventus, on return of, by sheriff, 1048, 1049; by sergeant-at-arms, 1049,
 1050.
privileged person, against, 1066.
sequestration for non-payment of costs, on issue of, 1453.
 against privileged person, 1454.
sergeant-at-arms, on order for, for contempt in not answering, 494; non-obedience to
 decree or order, for, 1048.
service of bill out of jurisdiction, on application for leave for, 452.
 to discharge order for, as irregular, 458.
service of notice of the decree on infant, or person of unsound mind, on application
 for, 334, 483.
service of bill on formal defendant, on application to enlarge time for, 429.
special examiner, on application of appointment of, 906.
statutory jurisdiction, on applications under, 1851.
stop order, on application for, 1695.
subpoena for costs, on issue of, 1452.
substance of case only need be proved, 856.
substituted service, on application for, 449.
substitution of purchaser, in support of application for, 1285.
succession duty, on payment of, 1805.
supplemental answer, on application for leave to file, 781.
supplemental suit, in, 1537.
sworn, not evidence, 688 n., 689 n.
take bill off file as being unauthorized, on motion to, 808.
taken, how, 885–890.
telegrams, 879 n., 907 n.
time for taking, 889, 890.
 enlargement of, 890.
 application for, how made, 890, 1828; costs of application, 890.
 cross suits, in case of, 976, 1552.

[The references are to the star paging.]

EVIDENCE — continued.

long vacation, on expiration in, 889.

production of order to registrar, 889 n., 964.

traversing answer, on application to file, 514.

traversing note, on application for leave to serve, 515 ; to take off file, 515, 516.

trial of question of fact, on, 1097-1106 ; of issue, 1115-1119.

trustee, on appointment of new, 1268.

unnecessary, costs of, disallowed, 836, 1394.

variance, effect of, 361 n., 860, 861.

(See **VARIANCE**.)

verdict against evidence, new trial of question of fact, on ground of, 1121 ; at law, 1129.

verdict against evidence, new trial at law, on ground of, 1129.

viva voce evidence, how and when taken, 903-919.

hearing at, order to take, necessary, and how obtained, 911.

setting down cause after, and fixing day for hearing, 911, 966.

judge's notes, of authority of, 912.

short-hand writer, when employed to take notes of, 912.

weight of, new trial because verdict against, 1121 ; at law, 1129 ; costs when new trial granted, 1138.

will, of proof of, 857.

withdrawal of disclaimer, on application for, 709.

EVIDENCE BEFORE THE MASTER, 1187 et seq.

pleadings and proceedings in the cause, 1188, 1189.

answer, 1188.

depositions, affidavits, &c., 1188 n., 1189.

interrogatories, 1188.

admissions, 1188.

depositions in another cause between same parties, 1189.

evidence taken at the hearing, 1189.

affidavits, when used, 1189, 1190.

by consent, 1189, 1190.

infant, 1189.

in reply, 1191.

witnesses previously examined in the cause, 1191 et seq., 1198.

generally not examined without order, 1191 et seq.

cross-examination of former witness, 1194.

parties, 1180 et seq., 1194.

order for examination of party, 1194.

method of examining witness before Master, 1195 et seq.

by Master, 1197.

commission, 1197.

subpoena to attend Master, 1198.

EX-MORAVIAN OR EX-QUAKER,

answer of, how taken, 746.

EX PARTE EXAMINATION. (See EXAMINATION OF WITNESSES, EX PARTE.)

EXAMINATION (OF DEFENDANT),

upon interrogatories after third insufficient answer, 771-773.

how taken, 772 ; notice of filing, 772.

plaintiff not entitled to attend, 778.

discharge of defendant after, 773 ; application for, how made, 773 ; costs, 773, 1439.

plaintiff entitled to see examination before defendant discharged, 773.

EXAMINATION (OF MARRIED WOMAN), 93-101.

abroad, how taken when resident, 94, 95.

affidavit of no settlement, or that it does not affect fund, 95.

certificate of counsel that settlement does not affect fund, 95, 96.

Chambers, how taken at, 94.

affidavit by solicitor that settlement does not affect fund, 95.

commissioners, how taken by, 96

how appointed, 96 ; who may be, 96.

court, how taken by, 93.

fund under 200*l.*, or 10*l.* per annum, not required if, 97.

infant not taken if she is, 96.

land, taken where fund has arisen from sale of, 99.

remainder or reversion, not taken where property is in, 98.

second, when dispensed with, 97.

[The references are to the star paging.]

EXAMINATION (OF MARRIED WOMAN) — *continued*.

separate estate, not required if fund is, 100; unless husband recipient, 100.
separate receipt, required, though fund paid to, 98.
stage of proceedings at which taken, 98.
Tenant in Tail Act, under, 99.

EXAMINATION (OF PARTIES),

before the Master, 1180–1187.

(See **MASTER'S OFFICE**.)

EXAMINATION (OF WITNESSES), 903–919.

abatement of cause, not vitiated by, if unknown, 919.
aged witness of, how taken, 910.
appeal by court on, 913, 1488.
before the Master, 1191–1198.
attendance of witness, how obtained, 906, 914, 915.
chief clerk, how taken by, 1826.
claim, on, 888, 1195, 1210.
deposit on obtaining appointment before examiner of court, 906 n.
examiner, before, how conducted, 904, 905, 906.
adjournment, in case of, 907 n.
attendance of witness, how procured, 906–909.
foreigner, of, how taken, 918.
hearing of cause, at, 981.
infirm witness, of, how taken, 910.
injunction, on application for, 1670.
irregular, if before replication, or notice of motion for decree, entry of claim and service of notice of motion or presentation of petition, 888.
issue joined, how taken after, 904.
issue on trial of, 1115.
jurisdiction, of witness out of, how taken, 910, 915–919.
leading questions may be put on, when, 1098.
motion for decree, on, irregular by plaintiff in chief, 823.
notice of, to other parties, time for, 915.
oral, when required by court, 912.
partition, under commission of, 1153.
perpetuate testimony, to, only directed on bill filed, 1572.
printing, 902, 903.
service of notice of appointment for, on witness, 907.
trial of question of fact, on, 1097–1102.

EXAMINATION (OF WITNESSES, COMMISSION FOR), 915–919.

attendance of witnesses before, powers to compel, 916, 918 n.

costs of, 919.

discovery, bill of, may pray for, 848.

examination *de bene esse* not permitted under prayer for, 383.

jurisdiction, to take evidence out of, 915; practice on, 917.

in the United States courts,

915 n., 916 n.

in the State courts, 915 n.,

916 notes, 977 n.

(See **COMMISSION**.)

form, preparation, and issue, 916, 917; fees on, 916 n.

EXAMINATION (OF WITNESSES *DE BENE ESSE*). (See *DE BENE ESSE EXAMINATION*.)

EXAMINATION (OF WITNESSES, *EX PARTE*),

affidavit, treated as, 901, conducted, how, 901, 902.

cross-examination on, 888, 913.

deposit on obtaining appointment before examiner of the court, 906 n.

evidence, when taken by, 888.

issue joined, after, evidence taken by, 888, 900–902.

motion for decree, irregular, on, 901 n.

notice of, contents and time for, 901, 902.

printing, 902, 903.

EXAMINATION (ON INTERROGATORIES), 920–932. (See *INTERROGATORIES*.)

of fixing time and mode of proceeding, 926 and notes.

notice of the place, 926 n.

where witness in prison, 926.

or sick, 926.

[The references are to the star paging.]

EXAMINATION (ON INTERROGATORIES) — continued.

form of oath, 927.
 proceedings after witness has been sworn, 927.
 instructions for examiner, 927.
 method of examination, 927.
 in the United States courts these examinations may be conducted orally, 927 n.
 examiner may explain interrogatory, 928.
 how depositions to be taken down, 928.
 use of notes by witness, 928; see 906 n.
 rule same as at law, 928.
 to be taken in first person, 929.
 where witness does not understand English, 929.
 deposition to be read over to witness, 929.
 when witness may alter or add to deposition, 929.
 not after signature, except, &c., 929, 930 and n.
 signature of witness, 921 and n.
 where witness refuses to be cross-examined, 930 and n., 981.
 where relation of witness changed during examination, 930 n.
 when testimony of witness complete, 930 n.
 cross-examination, 980.
 notice and objects of it, 980, 981.
 where cross interrogatories not filed before termination of examination, 981.
 witness to be sworn to answer to cross interrogatories as well as to original interrogatories, 932.
 examination continued until publication, 932.
 how long continued, 932.

EXAMINERS,

certificate of, of default or misconduct of witness, 908.
 Court, of the, number of, 904.
 death of, effect of, 910.
 depositions, how taken down by, 888 n., 904-906.
 (See DEPOSITIONS.)
 discretion of, 906.
 fees, on taking examination in country, 910 n.
 pleadings, to be furnished with copies of, 904.
 relevancy of question, cannot decide on, 905, 906.
 but must give opinion on, 905, 906.
 signature of, to depositions, 904, 905, 910, 911; omission of, effect of, 911.
 refusal of witness, on, 905.
 special matter, may state, 905.
 special, when appointed, 905; how and who appointed, 905.
 costs of taking evidence abroad, by, 919; fees of, 906 n.
 jurisdiction, examination of witness out of, taken by, 892 and notes, 915.

EXCEPTIONS (BILL OF),

misdirection at trial of issue does not lie for, 1119 and n.

EXCEPTIONS (FOR IMPERTINENCE),

abolished in England, 350, 759.
 matter expunged upon, when, 759 n.
 must describe particular passages, 759 n.
 practice on, in United States, 759 n., 760 n.
 reference of, 759 n.
 separate, for scandal and impertinence, not allowed, 759 n.

EXCEPTIONS (FOR INSUFFICIENCY), 758-774.

allowance of, may be partial, 764.
 effect of allowance, United States court rule, 769 n.
 in New Hampshire, 767 n.

amended bill, to answer to, 761, 762.

amendment of, 763, 764.

answer, all defects in must be supplied by taking exceptions, 760 n.
 none where oath waived, &c., 760 n.

how taken, 760 n.; and when sustained, 760 n.

appeal from order on, 774.

body of, 763.

costs of, 766, 767, 773, 774 and n., 1455, 1559.

(See COSTS.)

definition of, 759.

demurrer and plea, to answer accompanying, 789.

to what parts of the bill, 789.

[The references are to the star paging.]

EXCEPTIONS (FOR INSUFFICIENCY) — continued.

- demurrer, none to an answer, 758 n.
demurrer, to answer accompanying, partial, 590, 760, 761.
 when demurrer allowed, 761; when overruled, 601, 761.
 withdrawal of, where filed too soon, 760.
disclaimer, to, 708; irregularity in, waived by, 708.
discouraged, if interrogatories substantially answered, 760 n.
documents, to answer as to, discouraged, 485 n., 760 n., 1818.
engrossment of, 764.
evasive, 760.
 filing of, 765; notice of, 765; neglect to give, consequence of, 765.
 after expiration of time, 766.
form of, 759 n., 763 and n., 2124 and n.
heading of, 768; if to second or third answer, 771.
hearing of, 768.
 before what judge or magistrate, 768 and n.
impertinence, 759 n.
indorsement on, 454, 765.
infant's answer, cannot be taken to, 169.
interrogatories for examination of plaintiff, to answer to, 1555.
 general interrogatory, omission to notice charges in bill, under, 758 n.
motion for decree, cannot be taken after service of notice of, 766, 821.
new, cannot be taken, 770; except to amendments of bill, 770.
new matter, 759 n.
notice of filing, 758 n., 765 notes.
nunc pro tunc, filing, prohibited, 765, 766.
oath or signature, do not lie to answer put in without, 737, 2124 n.
office copy of, 765.
paper on which written, 764.
papers for use of court at hearing, 768; where to second or third answer, 770.
plea, to answer accompanying, partial, 691, 760.
 when plea allowed, 761; when overruled, 691, 761.
plea, to answer, in support of, 625.
plea ordered to stand for answer, when, 701, 761.
production of documents after allowance of, 769 n.
protestation of honor, do not lie to answer put in without, 738.
relevancy of question or statement to be considered in deciding upon, 769.
replication, cannot be taken after, 766, 834; withdrawal of replication, to enable exceptions to be taken, 766.
second or third insufficient answer, proceedings in case of, 770, 771 and n.
separate, necessary to separate answers, 764.
setting down, 767 and notes, 768; when second or third answer insufficient, 770; notice of, 770.
signature of counsel to, 768 and n.; how affixed, 764; taking off file for want of, 768.
stand over, indefinitely, not to, 769.
submission to, 766; by some of several defendants, 767.
 costs on submission, 767, 773.
 process for want of answer, after, 789.
 time for answer after submission to, 739, 767.
supplemental answer, do not lie to, without leave, 784.
taking off the file, for irregularity, 763.
time for filing, 758 notes, 765; extension of, how procured, 766.
 answer accompanying partial demurrer, in case of, 590, 601, 760, 765.
 answer accompanying partial plea, in case of, 691, 760, 765.
 answer in support of plea, in case of, 624.
 demurrer and plea, after defence by, 789.
 plea ordered to stand for answer, where, 701, 766.
 vacations not reckoned in, 766.
time for setting down, 767; enlarged or abridged, when, 767.
 election, in cases of, 767, 816.
 injunction cases, in, 767.
 second or third insufficient answer, in case of, 770, 771.
 vacations, when reckoned in, 768.
time for submission to, 766; extension of, 766 n.
traversing note, filing of, after exceptions, 514.
waiver of, 418, 762.

EXCEPTIONS (TO MASTER'S REPORT), 1309-1319. (See REPORT OF MASTER.)

[The references are to the star paging.]

EXCEPTIONS (FOR SCANDAL), 351-355.

- abandoned, when considered as, 352 ; costs of, 353.
- answer, to, of defendant, 758 ; of plaintiff to defendant's, 1555.
- form of, and filing, 352 ; notice of filing, 352.
- office copy of, 352.
- partly overruled, may be, *sensible*, 352.
- person not party to the cause may file, by special leave, 351.
- plea, to, 686.
- setting down, time for, 352 ; how effected, 353 ; notice of, 353.
- stand over indefinitely, not ordered to, 353.
- time, may be taken at any, 354, 759.
- scandalous matter in bill does not authorize similar matter in answer, and latter will be expunged on, 759 n.
- separate, for scandal and impertinence, not allowed, 759 n.
- must describe objectionable passages particularly, 759 n.
- expunging scandalous and impertinent matter, 759 n.
- reference of answer for, 759 n.

EXCHANGE (BILL OF),

- drawer or indorsee of, when not necessary party, 207.
- exhibit, provable as, at hearing, 882.
- interest allowed on, 1257.
- negotiation of, when restrained, 1651.
- application usually made *ex parte*, 1651, 1665.
- evidence on application, 1651.
- forged indorsement, in case of, 1561.
- parties to bills relating to, 207.

EXCHEQUER BILLS,

- delivery of, out of court, how effected, 1812.
- deposit of, in court, when ordered, 1778 ; how effected, 1788.
- interest, how received, where deposited in court, 1788.
- purchase of, how effected, 1788.

EXCHEQUER BONDS,

- delivery of, out of court, how effected, 1812.
- to personal representatives, 1813.
- deposit of, in court, how effected, 1788.

EXCHEQUER (COURT OF),

- Attorney-General, when sued in, 133.
- concurrent jurisdiction of Court of Chancery with, 184.
- equitable jurisdiction of, transfer of, to Court of Chancery, 6, 134.
- informations, when filed in, 6.
- practice in crown suits, how regulated, 7 n.

EXCOMMUNICATION,

- no longer a disability, 45 n.
- plea of, put in without oath, 687.

EXECUTION.

- deed of, how enforced, 1061 and n.
- deed of, proof of by attesting witness, when unnecessary, 880.
- "delivery in," 1035 n.
- injunction to restrain, 1624.
- issue of, by creditor, when not restrained, after decree, 1624.
- of sequestration, on *mesne process*, 495.
- for non-obedience to decree or order, 1052-1057.
- in the United States, 1042 n.
- courts have power to issue, or other necessary process, 1042 n.
- writ of, allowance of costs of, 1439.

EXECUTION (BILL TO CARRY DECREE INTO), 1585, 1586.

- appeal, may be filed pending, 1467.
- appropriate, in what cases, 1585.
- assignee of party to former suit, by, 1585.
- inferior court, to carry decree of, into execution, 1585.
- original decree can only be objected to by defendant in new suit, 1586.
- person not party to original suit, by, when allowed, 1585.
- reversal or variation of original decree, on, 1586.

EXECUTION (WRIT OF),

- Great Seal, under, abolished, 1042, 1048.
- registration of, under Judgment Acts, 1035 ; fee on 1035 n.
- satisfaction of, how entered, 1035.
- to enforce obedience to decrees or orders, 1042 n.

[The references are to the star paging.]

EXECUTORS,

accounts of, discovery of, must be given, 722 n.
 acting, necessary parties, though they have released and disclaimed, 252.
 administration decree, on application of, against one legatee or next of kin, 432, 483;
 but others must be served with notice of it, 225, 438.
 appointment of, evidence of, 857 n.
 co-executor, when added as a party at the hearing, 227, 267.
 co-plaintiffs, need not all be, 226, 227.
 costs of, 1382, 1421.
de son tort, personal representative necessary party to suit against, 319.
durante minore aetate, necessary party, unless he has fully accounted, 250.
 evidence in suit against, 857.
 executor of proving executor, when he represents estate, 252 and n.
 grant of probate need not be alleged in bill against, 315.
 infant, a necessary party, 226.
 interest, as to charging with, 2061 n.
 jurisdiction, out of, not necessary party to suit against co-executor, 150, 271
 limitations, (statute of), not bound to set up, 643 and n.
 limitations (statute of), does not run to bar action against, until proof, 648; unless
 de son tort, 648.
 loss of time, not entitled to compensation for, 1233.
 parties, all who have proved necessary, 252.
 except those abroad in contempt, 252 and n.; or outlaws, 249, 250.
 payment into court by, when ordered, 1770-1773.
 plaintiff, description of, as such, unnecessary in first part of bill, 352.
 plaintiff, must state he has proved will, 818.
 unless bill filed to protect property pending grant, 818.
 plea that defendant is not, 631; that plaintiff is not, 630.
 prayer for process, describing in, 390 n.
 probate, suing before, must prove before hearing, 318.
 such a bill not demurrable, if proof alleged, 319.
 but fact may be pleaded, 319.
 receiver, when appointed against, 1722.
 (See RECEIVER.)

renouncing, not necessary parties, 227.
 representatives of deceased, when necessary parties, 252.
 revivor against, 407 n., 1526; not ordered until probate, 1526 n.
 sale, with power of renouncing, effect of, 253.

(See PERSONAL REPRESENTATIVES.)

sale, with power of, when they represent *cestui que trust*, 222.
 trade, not justified in carrying on testator's, 2061 n.

EXECUTORY DEVISEES,

intermediate, necessary parties, 266.
 necessary parties, when, 228.
 not in esse, bound by decree against first estate of inheritance, 229.
 waste, when restrained, on application of, 1630.

EXECUTRIX,

husband of, generally a necessary party, 253.
 injunction, when granted against, 253.
ne creat, not granted against, if a married woman, 180, 1704.
 receiver, when appointed against, 1722.

EXEMPLIFICATION,

decree or order, of, to enforce it in Ireland, 1068; fees on, 1068 notes.
 record of Superior Court, of, admitted without proof, 863.

EXHIBITS,

alterations in accounts made, how authenticated, 896.
 annexation to affidavit, when improper, 896.
 bill and answer, may be proved at hearing on, 828, 881.
 hearing, proving at, under order, 881-885.
 what may be so proved, 881; what may not, 882.
 appeal, at hearing of, 1486.
 attendance of witnesses to prove, how enforced, 884.
 bill and answer at hearing on, 829, 881; confined to documents mentioned in the
 order, 884.
 impeached documents not provable as at, 883.
 unless validity only disputed, 883.
 mode of proof, 884.
 mortgage deed, when provable as, 883.

[The references are to the star paging.]

EXHIBITS — continued.

objection may be made to admissibility of, 884.
 order to prove necessary, 884; omission of, how remedied, 884.
 form of, 884.
 how obtained, 884.
 minutes, to be left on bespeaking, 1010, 1011.
 will not provable, as, 883.
 identification of, 896.
 production to deponent, of, 896.
 production of, before hearing, not usually compellable, 884, 896.
 reference to, in order or decree, 1002.

EXILE,

wife of, sued without him, 178.

EXPENSES,

witness, of, tender of, 908.
 married woman, in case of, 908.
 costs, charges, and, in which cases just allowances, 1233.
 (See **JUST ALLOWANCES.**)

EXPERT,

accounts, assistance of, in taking, 983.
 assistance of, may be obtained, 983.
 stage of the cause, at what, 983.
 fees of, 911 n., 983 and n., 1330 n.
 impounding documents for examination by, 1209 n.
 nuisance, appointment of, in cases of, 1687 n.
 report of, how regarded, 983.

FACT (CONCLUSION OF),

statement of, in Master's report, 1298.
 where only presumptive evidence, 1298, 1299 and n.

FACT (QUESTION OF),

advance out of fund in court, when made for trial of, 1082.
 appeal from order directing trial of, 1082, 1463 and n.; after the trial, 1020, 1476.
 assizes or *Nisi Prius*, trial of, at, when directed, 1071, 1110.
 Chancery, determined by Court of, when, 1071; when not, 1071, 1072.
 compromise at trial, effect of, 1048.
de bene esse, examination, when allowed after trial of, 984.
 decree for trial of, not a final decree, 986 n., 987.
 discovery, bill of, does not lie without leave of the court, after order for trial and
 production of documents, 1118, 1557.
 dismissal, on plaintiff's application, permitted, after order for trial of, 794, 1119;
secus, after the trial of, 793, 1120.
 enrolment of order made after trial, effect of, 1024.
 form of, not changed on motion for new trial, 1139.
 further hearing after trial of, 1146–1149.
 (See **FURTHER HEARING.**)

new trials of, 1120–1144.

(See **NEW TRIAL.**)

trial of, when directed, 987, 1071–1082.

boundaries, in suit for settlement of, 1163, 1164.

discretionary, except in case of heir, rector, or vicar, 1075 n., 1076 and n.

but decision may be appealed, 1075.

not granted, where, though fact found to be true, law would be adverse, 1077; or
 only one verdict could be found, 1077.

equitable title, depending on legal title, in cases of 1071, 1072, 1078, 1079, 1080.

evidence, contradictory, in case, 1072 n.

insufficient, granted in case of, when, 1072, n., 1078.

forgery, granted in case of, if evidence conflicting, 1077 and n.

other cases in which issues have been directed, 1072 n.

cases, in which issues refused, 1072 n., 1078 n.

hearing at, when directed, 1078.

heir-at-law, right of, to issue, 876, 1074, 1075.

injunction, on application for committal for breach of, 1078, 1686.

injunction suits, in, 1072; stage of suit at which directed, 1078–1080.

interlocutory application, when directed on, 1079 in n.

issue, how applied for, motion, 1075 n., 1078 n., 1110 n.

how made up, 1076 in n.; by whom to be framed, 1110 n., 1111 n.

[The references are to the star paging.]

FACT (QUESTION OF) — *continued.*

- should be specific and distinct, 1111 n.
- objections to form of issue should be made before trial, 1111 n.; and in the court from which sent, 1111 n.
- may be amended, 1111 n.
- may be tried as raised by the pleadings, 1111 n.
- each must be separately passed upon, 1111 n.
- in what county and court, tried in Massachusetts, 1112 notes.
- material point, not in issue, when directed to try, 1078.
- material or not, whether fact proposed to be tried is, question for court, 1078, in n.
- new issue not suggested by answer, not to be added to those already directed, 1078 n.
- nuisances, in cases of, 1637 n.
- one witness only supporting plaintiff's case, 847, 848.
 - if asked for by defendant, 848.
- order for issue interlocutory, 1079 and n.
- order directing issue may be set aside, when, 1077 n.
 - court may make decree without setting aside, 1077 n.
- patent cases, in, 1642 n.
- principle and objects of, 1072 notes.
- pro confesso*, issues taken against plaintiff, when, 1114, 1115.
 - costs occasioned by, 1115.
- question in suit, may be directed as to any, 1078.
- receiver, on, motion for, 1078.
- rector, right of, to, 1074.
- right to issues in different States, how far parties have, 1075 n.
- several directed, where, 1111.
 - issues may consist of a series of questions, 1111 n.
 - stage of cause, at what directed, 1078 and n., 1079, 1080, 1110 n.
 - suggestion, not granted on mere, 1077.
 - vicar, right of, to, 1074.
 - will disputed by heir, in case of, 876, 1074, 1075.
- trial of, before court itself, with or without jury, 1083-1110.
 - address of counsel in opening case, 1096.
 - arguments on objections taken during, 1104.
 - assizes or *Nisi Prius*, at, 1110-1120.
 - (See ISSUE.)
 - begin, right to, upon, 1096.
 - costs of, 1137, 1188, 1149, 1883, 1407.
 - (See COSTS.)
 - cross-examination on, 1102-1104.
 - day, fixing for, 1083; costs of application for, 1083 n.
 - de bene esse*, evidence taken, when read at, 939, 941.
 - defence, how conducted, 1105; several defendants, where, 1105.
 - witnesses, calling, to disprove, 1105.
 - examination of witnesses on, 1097-1102.
 - irregularity in, new trial on ground of, 1124.
 - jurisdiction of court at, 1087.
 - jury, when directed before, 1080.
 - powers and proceedings of the court as to, 1088-1095.
 - papers for use of court, 1086.
 - recalling witness on, 1104.
 - record for trial, 1083.
 - (See RECORD FOR TRIAL.)
 - re-examination of witness on, 1104.
 - reply, 1106.
 - summing up by counsel for plaintiff, 1106; for defendant, 1106.
 - by judge, 1107.
 - verdict, 1107-1110.
 - (See VERDICT.)
 - Vice-Chancellor cannot vary Chancellor's order for, 1080.
 - view, how obtained, on, 1088; proceedings after, 1088.
 - witnesses, attendance of, how compelled, 1086.
 - how called and sworn, 1097; how examined, 1097-1104, 1105.

FACTOR,

- jurisdiction, out of, not a necessary party to suit against co-factor, 150, 271.
- privy, not destroyed by employment of, 325.

(The references are to the star pagina.)

FACTS,

admission of, by demurrer, 543-546.
 alleged in bill, how, 860.
 answer, stated in, when introduced in bill by amendment, 407.
 evidence of, not admitted, if not noticed in pleadings, 852.
 exceptions, where pointed to general charge, 858.
 filing of bill, occurring since, how introduced, 408.
 imaginary, statement of, to found interrogatories, not necessary, 485.
 inquiry as to, when directed, in case of defective evidence, 868, 869.
 not pleaded, evidence of, inadmissible, 328, 711, 712, 852.
 several, pleaded in one plea, when, 603, 608.
 unimportant, introduction of, plea, not vitiated by, 610.

FAILURE,

banker, of, receiver when charged with loss occasioned by, 1761.

FALSE AVERTMENT,

of fact judicially noticed, not attended to, 19, 546.

FALSIFYING ACCOUNTS,what is, 668; errors in law may be shown, 668.
 leave given for, when, 668; is mutual, 668.**FAMILY ARRANGEMENTS,**

not disturbed on ground of mistake, 1622.

FAMILY MANSION,

pulling down by tenant for life restrained, 1633.

FEDERAL COURTS AND RULES. (See UNITED STATES COURTS.)**FEES,**

seisin in, how alleged in bill, 302.

FEES (OF COURT),

Accountant-General's office, in, 1786 n.
 affidavits, for office copies of, 900 n.
 answer, on taking, 744 n.; of invalid, 745 notes.
 answer, on certifying official printed copy of, 757.
 appearance, on entry of, 537 n.
 by plaintiff for defendant, 462 n.
 assistance, writ of, on, 1063 n.
 attachment, on writ of, 464 n., 1454 n.
 bill, on filing, 899 n.; amended, on filing, when reprint necessary, 423.
 copies for service, on stamping, 442 n.; restamping same, 442 n.
 caveat against enrolment, on entry of, 1024 n.
 certificate (Accountant-General's), on, 1785 n.
 certificate (Record and Writ Clerk's), of entry of memorandum of service of notice
 of the decree, 436 n.
 to set down cause, 965 n.
 certificate (Taxing Master's), on, 1446 n.
 copies of documents deposited at Record and Writ Clerk's office, for, 1898 n.
 decrees and orders on, 1015 n.
distringas, on writ of, 477 n., 1692 n.
elegit, on writ of, 1063 n.
elegit, sheriff's, for execution of, 1064.
 enrolment of decree or order, on docket of, 1022 n.
 on entry of *caveat* against, 1024 n.
 enrolment of receiver's recognizance on, 1739 n.
 evidence, on commission to take, 916 n.
 evidence, on official printed copy of, 903; plain copies, 903.
 exemplification of decree or order, on, 1068 notes.
fieri facias, on writ of, 1063 n.
fieri facias de bonis ecclesiasticis, on writ of, 1065.
fieri facias, sheriff's, for execution of, 1064.
 further consideration, on order on, 1375 n.
 injunction, on writ of, 1674.
 inspection of documents at Record and Writ Clerk's office, on, 1898 n.
 interrogatories, on marking copies for service, 482 n.
ne exeat, on writ of, 1709 n.
 oath on, 1441 n.
 partition, on commission of, 1153 n.
 pauper, not taken from person suing or defending as, 43, 44.
 except for writing and copying, 43, 44.

GENERAL INDEX.

2593

[The references are to the star pages.]

FEES (OF COURT) — continued.

- petition of appeal, on, 1480 n.
- petition to Lord Chancellor, on, 1606 n.
 - to Master of the Rolls, 1606 n.
- production of deposited documents, on, in court, 872 n.
 - out of court, 872 n.
- receiver's account, on allowance of, 1753 n.
- registration and re-registration of decree or order as judgment, on, 1035 n.
 - writ of execution, of, 1035 n.
- registration of *lis pendens*, on, 400 n.; re-registration, 400 n.; entry of, satisfaction of, on, 401 n.
- scales of, 1443, 1444.
- scire facias*, on proceedings by, 1758 n.
- search in Report Office, on, 1018 n.
- sequestrari facias*, on writ of, 1065.
- sequestration, on commission of, 478 n.
- subpœna*, on writ of, 967 n., 1454 n.
- taxation on, 1446 n.
- Taxing Master's warrants, on, 1445 n.

FEIGNED ISSUE. (See Fact, Question of. Issue.)

FELLOWSHIP,

- college, receiver appointed of, 1730.

FELON,

- answer of defendant in jail as, proceedings in default of, 498.
- costs, security for, when required from, 82.
- infant, assignment of custody of, 1868.
- plea of conviction as, put in without oath, 687.
- wife not bound by answer to expose husband to charge as, 184, 563, 564.

FELONS' PROPERTY ACT (33 & 34 Vic. c. 28),

- provisions of, 54-57.
- statutory jurisdiction under, 57.

FELONY,

- conviction of, effect of, under former law, 53, 54; under present law, 54.
- plea of, in case of defendant, 631; of plaintiff, 630.
- judgment for, effect of, where felony capital, 54; where not capital, 56.
- outlawry for, effect of, 54, 55.

FEME COVERT. (See MARRIED WOMAN.)

FEME SOLE,

- coverture, plea of, by married woman sued as, 681.
- marriage of, no abatement, in case of defendant, 188.
- marriage of, an abatement, in case of plaintiff, 113, 1507.
 - motion for revivor or dismissal of suit on, 818.
 - order unnecessary, if husband dies before it is obtained, 118.
 - want of order of revivor not a ground for reversing decree on bill of review, 118.
 - marriage of, effect of on previous order for payment to, 97.
 - married woman, may act as, when necessity requires, 89.
 - married woman, instituting suit, become subject to liabilities of, 118.
 - married woman, instituting suit as, proceedings stayed, 113 n.
 - married woman, suing as, statement of fact of, 369.

FÊTE,

- holding of, when restrained, 1635 n.

FICTITIOUS PERSON,

- plea that plaintiff is, 680.

FIERI FACIAS (WRIT OF),

- arrest under attachment, right to, not lost by, 1065.
- corporation aggregate, against, 1067.
- costs, to enforce payment of, 1451, 1456.
- decree or order, when issued to enforce, 1068.
- execution of, 1064; fees for, 1064.
- see on, 1063 n.
- filing of, 1064.
- indorsement on, 1064.
- insufficient levy, proceedings, in case of, 1065.
- Parliament or peerage, against person having privilege of, 1066.
- paying into court, not enforced by, 1068 n.

[The references are to the star paging.]

FIERI FACIAS (WRIT OF) — continued.

preparation and issue of, 1068 ; date of entry must be written on order, 1016.
receiver, against, for non-payment to party, irregular, 1063 n. 1755.
return of, 1064.

second writ of, when issued, 1065.

stop order, when granted in favor of creditor under, 1694.

FIERI FACIAS DE BONIS ECCLESIASTICIS (WRIT OF),

applicable when, 1065.

execution of, 1066.

fees on, 1066.

filings, 1065.

indorsement of, 1065.

preparation and issue of, 1065.

return of, 1066.

FILE (TAKING OFF THE),

affidavit, for scandal and irrelevance, 785, 894.

answer, 731, 748, 784, 785.

acceptance of answer, must be made before, 784.

application for, how and by whom made, 785.

contempt, when filed by defendant, in, 508, 1455.

counsel's signature, for want of, 733.

evasive, because, 785 ; application when and how made, 785 ; costs, 785.

form and notice of motion, 782.

formal parts, for correction of, 785.

heading, for defect in, 782.

irregularity, for, 783, 753, 784, 785, 1455 ; in jurat, 748.

separate answer of husband, 181, 500.

sworn by all the defendants for whom it was prepared, because it was not, 782.

bill, 86, 307, 308, 312, 399, 425, 427.

amended, for irregularity, 425 ; not ordered if record can be restored to its original state, 427.

authority, because filed without, 307, 308, 399.

application for, how made, when, and evidence in support, 308.

costs, 308, 309, 1489.

counsel's signature, for want of, 312, 399 ; because altered after, 312.

application for, how made, 312.

disability because filed by person under, without next friend, 86.

because filed on behalf of person falsely stated to be under, 86.

discrepancy between written and printed, because there is, 397.

vexatious and illusory, because it is, 399.

consent, of pleadings and documents by, 785.

demurrer, when and how taken off, 592.

difference between taking off file and overruling, 592.

disclaimer not permitted, after exceptions, 708.

information because relator indemnified by his solicitor, 13 n.

interrogatories to amended bill, 485, 486.

petition of appeal for irregularity, 1478 , application for, how made, 1480.

plea, because filed without oath, 688.

pleadings and documents, because scandalous, 785.

review, bill of, for irregularity, 1578, 1579 ; application for, how made, 1579.

supplemental bill, for irregularity, 1535, 1587.

traversing note, on defendant's application, 516 ; on plaintiff's, 516.

application for, how made, and costs, 516 ; not ordered on *ex parte*, 516.

written bill, because printed, not filed, 396, 397.

FILING,

Accountant-General's certificates of operations, 1785.

admissions, 849, 1021.

affidavit, 898 ; notice of, 899.

consent to, though unauthenticated alteration therein, 895.

motion, where to be used upon, 1598.

pressing matter, in case of, 898, 899, 1598.

time for, of service of notice of motion or petition, 1597.

answer, 508, 731, 782, 788, 748, 747, 749, 754, 755.

consent to, though defective or informal, 748.

costs of contempt, without payment of, irregular, 509, 755.

foreigner, of, 747.

guardian *ad litem*, when put in by, 766.

infant, of, 169, 754, 755.

[The references are to the star paging.]

FILING — continued.

- married woman, separate, of, 188, 738, 754.
- notice of, 755 ; effect of neglect to give, 755.
 - on right to move to dismiss for want of prosecution, 810.
 - oath or signature, when taken without, 755.
 - printed, 757.
 - pro confesso*, after notice to take bill, effect of, 521.
 - pro confesso*, order to take bill not discharged upon, 523.
 - record, not considered as of, until, 754, 755.
 - Record and Writ Clerk's certificate, conclusive as to time of, 755.
 - sworn by all defendants for whom prepared, when not, 732.
 - time, when permitted without order, after expiration of, 755.
 - unsound mind, of person of, 755.
- arbitration, submission to, 1858 and n.
- attachment, when returned, 1047 n.
- award in suit referred to arbitration, 1861.
- bill, 398 ; fee on, 399 n.
 - amended bill, when, reprint necessary, 422.
 - limitations, statute of, when barred by, 643.
 - record, not considered as of, until, 398, 399.
- certificate of examination of married woman, 94.
- certificate, examiner's, of default or misconduct of witness, 908.
- certificate of partition, 1159.
- certificate, Taxing Master's, 1447.
- demurrer, 591 ; notice of, 592 ; effect of neglect to give, 593.
 - of lunatic, when committee adversely interested, 591.
- demurrer, by witness, 944.
- depositions, 902, 910, 938.
- disclaimer, 708.
- distringas*, writ of, 477.
- elegit*, writ of, 1064.
- evidence, in suit to perpetuate testimony, 1574.
- examinations on interrogatories, 772.
- examination of married woman, 94.
- exceptions for insufficiency, 765, 768 ; notice of, 765 ; effect of neglect to give, 765.
 - after expiration of time, 766.
- exceptions for scandal, 352 ; notice of, 352 ; effect of neglect to give, 352.
- fieri facias*, writ of, 1064.
- fieri facias de bonis ecclesiasticis*, writ of, 1066.
- habeas corpus*, writ of, when returned, 491 n.
- information, 399 ; amended, when, reprint required, 422, 428
- inquiry, writ of, 1141.
- interrogatories for examination of defendant, 482 ; after third insufficient answer, 772 ; of plaintiff, 1554.
- jury panel with names of jurors indorsed, 1110.
- opinion of foreign court, 1144, 1145.
- papers, after hearing, 978 n.
- partition, commission and certificate of, when returned, 1159.
- petition of appeal, 1480.
- petition, 1609 ; copy of, when allowed to be filed, 1610.
- plea, 689 ; effect of, 690 ; notice of, 689.
 - effect of neglect to give, 690.
 - oath or signature, when put in without, 689.
- record for trial, 1083 ; after trial, with jury panel annexed, 1110.
- replication, 881 ; advertisement, of, when directed, 820, 832.
 - formal defendants, in case of, 832, 833.
 - motion for decree, not necessary, when cause heard on, 819 and n.
 - notice of, 831 ; form of, 832 ; effect of neglect to give, 831.
 - service of, 831, 832.
- (See SERVICE.)
- nunc pro tunc*, 834, 983.
- pro confesso*, when bill is taken against some defendants, 832.
 - supplemental statement, to, 834.
- sequestrari facias*, writ of, when returned, 1065.
- sergeant-at-arms, return of, 494 n.
- supplemental bill, 1534, 1535.
- supplemental statement, 1530.
- traversing note, 514.

[The references are to the star paging.]

FINE,

abolished, 662.
injunction, for breach of, 1686 n.
plea of, averments in, 611, 662.

FISHERY,

bill claiming general right of, when not multifarious, 341.

FORECLOSURE SUIT. (See **MASTER'S OFFICE**. **REDEMPTION SUIT.**)

account, under statute, order for, 993; contemnor cannot apply for, 565.

advance of, may be directed, 972; costs of motion for, 1601.

bankrupt not a necessary party to, 215, 256.

cestui que trusts, represented by trustees in, when, 215, 257.

costs of, 1387; of disclaiming defendants in, 160, 709, 710.

mortgagee of, 1386.

decree, form of, 997.

final order on, required, and how obtained, 660, 999.

enrolment of decree for, effect of, 1027.

decree for, intermediate incumbrancer not bound by, 277, 660.

decree, proceedings under, 997-999.

decree, prayer for sale, not made under, 379.

decree, error in, where remedied, 660 n.

decree, form, 2214.

dismissal of, on payment of debt and costs, 794.

infant, against, day to show cause, when given, 167; when not, 168.

error, only cause infant can show against decree of, 167, 172.

unless he claims by title paramount, 172.

injunction issued after decree in, though not prayed, 1614.

intermediate incumbrancer, not a party, not bound by decree for, 660.

interrogatory in, 277 n.

land, a suit to recover, 652.

limitations, statute of, when applicable to, 652.

married woman, decree binding on, 187.

parties to, 212-217, 257, 259 n., 283 n., 261, 262, 264, 277, 279, 280, 283.

adverse claimant, 277 n., 339 n.

assignment of mortgage, in case of, 215.

bankrupt, mortgagor not, 215.

cestui que trust, when, 257.

derivative mortgagees, 216, 261.

devise of mortgage, in case of, 216.

general creditor, when relief also sought as, 283.

heir of mortgagee, in suit by, 221; when not, 198, 194, 215, 221.

heir of mortgagor, when, 283.

incumbrancers, prior, not necessary parties, 214, 279.

incumbrancers, subsequent, 214, 277.

whether incumbrance legal or equitable, 278, 279; if specific, 278, 279.

inheritance, owners of first estate of, and of intermediate estates, 262.

joint tenants of mortgage money, judgment creditor, 211.

mortgage money, all persons interested in the, 212.

unless their interests sufficiently represented, 212.

original mortgagee in derivative mortgagee's suit, 215.

personal representative of mortgagee, in suit by, 221.

successors in office, 221 n.

trustees, when mortgaged estate vested in, 215.

penalty, not a, 565 n.

plea of no mortgage in, 605.

preliminary order, in, 993.

sale, when directed instead of, 284 and n. 285 and n., 1265, 1266; terms,

on which directed, 1266; when only part of debt due, 284 n.

on sale of premises in, balance due on mortgage may be collected on execution
in United States courts, 1042 n.

solicitor to suitors' fund, costs of, as infant's guardian, in, 162 and n.

substituted service in, 448.

time for payment, enlargement of, in, 999, 1027; on what terms, 999.

appeal from decree, in cases of, 1000, 1470.

certificate, application to vary, where, 1000.

enrolment of decree, after, 1028.

rents received before day of foreclosure, where, 1000.

FOREIGN CORPORATIONS,

how they sue in this country, 24.

[The references are to the star pagina.]

FOREIGN CORPORATIONS — continued.

service of notice of motion on, 1596.
liability to suit, 144.

FOREIGN COUNTRY,

affidavits, how taken in, 892.
answer, how taken in, 745.
ne exeat, against person domiciled in, 1703.
punishment in, demurrer because discovery would expose defendant to, 567.

FOREIGN COURT,

affidavits filed or deposited in, how proved, 863.
creditor's suit in, restrained after administration decree, when, 1614.
decree, judgment, or order of, how proved, 863.
discovery, 562 n., 1556 n.
election, when plaintiff suing in, as well as in Chancery, 815.
judgment of, plea of, 664; averments and requisites of, 664.
litigation in, appointment of receiver pending, 1726.
perpetuation of testimony for use in, 1573.
pleadings filed, or deposited in, how proved, 863.
proceedings in, injunction against, 1626–1628; after decree in Chancery, 800.
proceedings, judicial or legal, of, how proved, 863.
staying proceedings after, decree in, 800.

FOREIGN DOMINIONS OF THE QUEEN,

answer, how taken in, 744.

FOREIGNER,

affidavit of, how taken, 897.
answer of, how taken in his own language, 746, 747; in English, 747.
jurat to, 747.
examination of, how taken, 918, 919.
ne exeat, when granted against, in suit by foreigner, 48, 49, 1703.
security for costs, 28 n.
suits by and against, 45, 629 n.

FOREIGN LAW,

ascertainment of, 864, 1142–1146.
foreign judgment, fraud in, 664 n.
foreign states, in, 1145.
Queen's dominions, in, 1142–1144.
case to be sent for opinion of foreign court, 864 n., 1142, 1143.

FOREIGN PROBATE,

payment out not ordered to representative under, 1809.
plea of, 664.

FOREIGN STATE AND GOVERNMENT,

acts of state, proclamations, and treaties of, how proved, 863.
ambassador of, immunity of, from process, 142.
contracts, enforcement of, against, 18 notes.
costs, may be ordered to pay, 20.
cross-bill, may be defendant to, 19, 20, 141; and must answer, 141.
diplomatic agent, not represented by, 20.
fund about to be distributed, may be defendant if interested in, 142.
jurisdiction, subject to, if a plaintiff, 20, 141.
non-recognition of, judicially noticed, although recognition averred, 18, 19.
officer of, need not be joined as plaintiff, 19; may be joined for discovery, 141.
recognition of, judicially noticed, 18, 546; and conclusive, 18.
suit by, 17–20.
form of suit, 19.
permitted, if recognized, 18; *secus*, if not recognized, 18.
private rights of, only lies to enforce, 18.
suits against, 141, 142.
expressly authorized to sue in courts of United States, 17 n.
one State of the Union may sue in courts of another State, 17 n.
one State may appear as plaintiff in Supreme Court of United States against
another State or citizen thereof, 17 n.

[The references are to the star paging.]

FORFEITURE,

answer, objection by, to discovery on ground of, 716.
 assignment, on breach of covenant against, not relieved against, 1659.
 attainer, on, 53-58.
 call, on non-payment of, not relieved against, 1657.
 declaration of, *cestui que trust* represented by trustee in suit for, 222.
 demurrer, objection by, to discovery on the ground of, 548, 562-569.
 demurrer by witness on the ground of, 942.
 discovery, objection to, because it would expose defendant to, 387, 566-568, 680, 716; applies whether forfeiture legal or equitable, 568.
 limitation over, does not lie in case of, 568.
 unless disqualification is in nature of forfeiture, 568.
 enforced, when, 387 n., 565 n.
 expiration of time for suit, discovery must be given after, 567.
 injunction, when granted in cases of, 1657-1660.
 insure, breach of covenant to, when and how relieved against, 1659.
 lease, of, landlord when restrained from enforcing, 1660.
 marriage without consent, on discovery, need not be given, 183, 567, 568.
 married woman not bound to answer so as to expose herself to, 183.
 outlawry for criminal offence on, 55.
 plea, objection by, to discovery on the ground of, 680.
 production, objection to, because it would expose party to, 1835.
 renewal, of covenant for, when relieved against, 1658.
 rent, for non-payment of, when relieved against, 1658.
 repair, on breach of covenant to, not relieved against, 1659.
 timber, for felling, whether relieved against, 1658.
 waiver of, when necessary, 386, 387; effect of, 387, 562, 563.
 demurrer for want of, 887, 548.

FORGERY,

counsel's name to pleading, of, how punished, 312.
 indorsement on negotiable instrument, injunction in case of, 1651.
 issue granted in case of, where evidence conflicting, 1077.
 new trial of issue on ground of, 1122, 1128.
 plea of, 639 n.
 plea of conviction for, put in without oath, 687.

FORMA PAUPERIS,

suing and defending in, 87-44, 154-158.
 costs, 1482 n.

(See PAUPER.)

FORMAL DEFENDANT. (See DEFENDANT, FORMAL. COPY OF THE BILL.)

FORMER SUIT (FOR SAME MATTER).

costs of, staying proceedings in second suit until payment of, 89, 796, 811.
 demurrer, on ground of decree in, 561.
 dismissal of, when a bar, 659 n.
 evidence to explain decree in, 659 n.
 evidence, admissible, when, 940 n.
 not ordered where plaintiff sues by next friend, 811.
 pendency of, 684 n.
 plea of decree in, 659-661.

(See PLEA.)

FRAUD,

action, when restrained on ground of, 1623.
 agents, arbitrators, or attorneys, charged with, when made defendants, 297-299.
 allegations and prayer of bill, 298.
 bankrupt cannot demur to bill of relief, charging, 158.
 charges of, answer as to, in pleas, 298, 616, 655, 671, 678.
 averments meeting, in pleas, 604-607, 614, 655, 678.
 denial of, by answer, not a ground for refusing discovery as to, 581, 582.
 communications, for purposes of effecting, not privileged, 578, 1835.
 allegations of bill in such case, 578.
 concurrent jurisdiction, to relieve against, in courts of law, 552.
 consent decree obtained by, impeached by, original bill, 974, 1584, 1585.
 costs of dismissed bill, claiming on ground of, 1397, 1398, 1399.
 creditor or legatee may sue debtor to estate in case of, 323.
 declaration of title obtained by, how far void, 1873.
 decree, how impeached for, 173 n., 582, 1584, 1585.
 within what period, bill for this purpose should be brought, 1585 n., 2069 n.

[The references are to the star paging.]

FRAUD — continued.

demurrer should be filed, though bill charges, 542.
denial of, by answer, does not relieve from obligation to give discovery as to facts
alleged as evidence of it, 721.
disclaimer, insufficient when discovery as to, sought, 707.
 although defendant a married woman, 185, 707.
discovery, in cases of fraud, 565; extent of, 580, 717, 718.
 in case of fraudulent trustee, 566.
election of remedies, 815 n., 817 n.
evidence of, must substantiate case as pleaded, 828-828.
general allegation of, insufficient, 324 and n., 545 n.
groundless allegations of, party introducing, must pay costs of, 1397, 1399.
infant, how shown by, as cause against decree, 164, 173.
judgment, impeachment of, for fraud, 663, 664 and n.
jurisdiction of equity over, 828 n., 552 n.
legatee may sue debtor to estate in case of, 200, 249, 323.
limitations (statute of), when applicable in case of, 644, 649, 655.
married woman's separate estate bound by her, 187.
new trial of issue on ground of, 1122.
opening biddings in case of, 1290.
patents, rescinding because of, 8 n.
plea of, 645 n.
professional confidence, no exemption from discovery in cases of, 578.
 nor from production, 1834, 1835.
receiver, when appointed in cases of, 1720.
relief only granted on case made by bill in cases of, 328, 882.
 practice, when other matters alleged in bill, 882.
 settlement of accounts in, effect of, 667.
rescission for, pleading, 385 n.
successive acts of, relevancy, 849 n.
trustee, by, 367 n., 619 n.
will, fraud in obtaining, not cognizable in Court of Chancery, 552, 663, 665.

FRAUD (BILL TO IMPEACH DECREE FOR),

appropriate, when, 1584.
form of, 1585; leave to file unnecessary, 1584.

FRAUDS (STATUTE OF),

benefit of, had by answer, 656 and n.; waiver of, 656 and n.; admissions by, 850 n.
cannot be pleaded to enable party to commit a fraud, 657.
defendant must claim benefit of, or it will not avail him at hearing, 2117 n.
demurrer on the ground of, 365 n., 561.

 where the objection clearly appears on face of bill, 655 n.
 secus where it does not so appear, 655 n.

hearing, when allowed to be orally pleaded at, 656, 657, 712.
plea of, 661, 618, 619, 655-657.

 answer in support of, when necessary, 619, 656, 657.
 averments in, 656.

(See PLEA.)

personal representatives, whether bound to set up, 655 n.
sales by court not within, 657, 1283.
section of, need not be pleaded, 365 n.

FREEHOLD ESTATE,

effect of sequestration on, 1056.

FREEHOLDER,

class-suit by, to establish commonable right, 239.

FUND IN COURT,

advance out of, when ordered to defray costs of issue, 1082.

appeal, retaining, pending an, 1469 n.

carrying over to another account, how effected, 1796; certificate of, 1796.

costs, how paid out of, 1458.

dividends and interest on, how received, 1791.

infant, belonging to, maintenance out of, 1856.

lien of solicitor on, 1845, 1846.

papers left on bespeaking order, dealing with, 1009, 1803.

payment out of, how effected, 1805, 1806.

stop order on, 1694-1697.

transfer from one account to another, how effected, 1796.

transfer out of, how effected, 1810, 1812.

[The references are to the star paging.]

FUNDS,

charging order on, 1088-1042.
description of, in decree or order, 1005, 1788; of residue of, 1005, 1784.

FURTHER ANSWER,

acceptance of, right to costs of exceptions not waived by, 775.
confined to unanswered interrogatories, 776.
form, preparation, taking, filing, and printing of, 776.
impertinence in, 776.
insufficient, old exceptions set down again, 770.
process in default of, after first or second answer found insufficient, 769.
 after submission to exceptions not set down, 766, 775.
 after submission to exceptions set down, 769, 776.
sufficient, when, 770.
time for, after answer, first or second, found insufficient, 769.
 amendments, and exceptions together, to, 788, 769, 775.
 contempt, where defendant in, 775; enlargement of, not granted, 769, 775.
 submission of exceptions not set down, after, 766, 776.
 extension of, how procured, 767.
 submissions to exceptions set down, after, 769, 775.
 extension of, how procured, 770, 775.

FURTHER CONSIDERATION, 1366-1375.

adjournment of, effect of, 1366; repetition of, 998, 1367.
boundaries, in suits to settle, 1164.
Chief Clerk's certificate, course where court dissatisfied with, at, 1367.
 not challenged at, 1368.
 separate, cause not heard on further consideration on, 1366.
co-defendants, decree made between, at, 1370.
conclusions drawn from certificate at hearing on, 1367.
costs, usually disposed of on, 1367.
declaration of rights at, 1367.
dismissal of bill at, 1370, 1371.
error in decree not corrected at, except in charity cases, 1368.
evidence, at hearing, on, what allowed, 1368, 1369, how adduced, 1366, 1367.
facts which may be proved at, 1374.
fee on order at, 1375 n.
further accounts and inquiries, when directed at, 1366, 1367, 1374.
hearing on, when necessary, 1366; how conducted, 1373.

(See HEARING.)

interest, computation of, directed at, 1368; though not prayed, 1369.
married woman, proceedings at, when her fund dealt with, 93, 1374.
matters in issue, not referred to at hearing, not considered at, 1368.
order on, must be consistent with decree and certificate, 1367, 1370.
order on, 1374; papers left on bespeaking, 1011, 1374.
papers for use of court at hearing on, 1373.
receiver appointed at, 1370.
setting down cause for hearing on, 1370, 1371.

(See SETTING DOWN.)

short cause, marking as, 1371; cause originating at Chambers, 1372.
summons, of suit commenced by, 1372.
wilful default, defendant not charged with, on, 1370.

FURTHER DIRECTIONS,

setting down on, 1471 and n.

FURTHER HEARING,

petition, of, 1608.
trial of question of fact or issue, after, 1146-1149.
 appeal, not stayed on account of pendency of, 1147.
 appeal from order at, 1149.
 cost of issue disposed of at, 1148.
 dismissal of bill at, 1148.
 interlocutory application, when trial was directed on, 1146.
 new trial, when directed at, 1147.
 order made at, 1146; where trial has not taken place, 1148.
 papers for use of court, 1147.
 pro confesso, where issue taken, 1114, 1115.
 service of order for, 1147.
 setting down cause for, where trial was directed by decree, 1146.

[The references are to the star paging.]

FURTHER HEARING — *continued*.

time for, 1147.

verdict, decree at, when made contrary to, 1147.

FUTURE RIGHTS,

declaration of, not usually made, 996.

GAOLER,

reports of, as to prisoners confined for contempt, 502.

GARNISHEE ORDER,

creditor not restrained from obtaining, after administration decree, 1615.
solicitor's lien has priority over, 1846.

GAVELKIND,

custom of, descent in, judicially noticed, 546.

GENERAL RIGHT,

bill for, against persons having separate and distinct interests, when not multifarious, 341.

bill for, by persons having distinct titles, not multifarious, 345.

owner of inheritance, necessary party to lessee's bill to establish, 209.

GOOD WILL,

sale of, does not imply covenant not to trade, 1654.

GOVERNMENT OF FOREIGN STATE. (See FOREIGN GOVERNMENT.)

GRANT,

deed must be alleged of things lying in, 367.

GRANTEE OF CROWN,

of *chase in action*, form of suit by, 7, 136.

GRATIS APPEARANCE, 441 n., 539.

GREAT BRITAIN,

statutes of, before union with Ireland, how proved, 862.

GREATER CERTAINTY,

reference to document for, effect of, 725, 726, 838; at argument of demurrer, 544;
on right to production, 1832.

GUARDIAN (OF INFANT), 1346–1356.

accounts of, passing, 1354.

appointment of, application for, how made in suit, 1348.

Chambers, made at, where no suit, 1348, 1349, 1354.

evidence in support, 1353, 1354.

father alive, when, 1349.

infant, after appointment by, 1350.

jurisdiction of court with respect to, 1348.

jurisdiction, when infant out of the, 1350.

liberty to apply for, when given, 1348.

security to account, how given by 1354.

suit, in, 1348, 1349.

control of court over, 1362.

costs of, 1360.

death, effect of, where appointed by court, 1353.

determination of office, what occasions, 1353.

discovery by, 717 n. (a).

leases, power of, to grant, 1364.

maintenance, not bound to account for expenditure in, 1361.

marriage of female, determination of office by, 1353.

next friend, may sue as, 69.

property of infant, power of, over, 1363.

removal of, application for, how made, 1354.

out of jurisdiction, allowed, but not compelled, 2293 n.

special case, concurrence in, for infant, 1682.

testamentary, how appointed, 1350; extent of power to appoint, 1351.

control of court over, 1352, 1363.

death of, effect of, 1353.

declining to act, proceedings in case of, 1352.

power over infant's property, 1363.

vacancy in office of, how supplied, 1354.

ward's name substituted for, by amendment, 405 n.

[The references are to the star paging.]

- GUARDIAN (OF PERSON OF UNSOUND MIND NOT SO FOUND),**
appointment of, 1361.
- GUARDIAN (SPECIAL, OF INFANT OR PERSON OF UNSOUND MIND NOT SO FOUND),**
Declaration of Title Act, appointment of, for applications under, 1872.
- GUARDIAN AD LITEM (OF INFANT),**
acts of, how far binding on infant, 163.
answer of, on behalf of infant, 163, 169, 185, 731, 783, 737, 753, 754.
heading of, 731 ; jurat to, 754.
improper, costs of, 163.
married woman, where a, 183, 754.
oath or signature, where put in without, 169 n., 737, 753, 754.
read, may be, against guardian but not infant, 170, 841.
substance of, generally mere submission, 163 n.
sworn, how, 169 n., 753.
appearance necessary, before application for appointment, by infant, 162.
appointment of, at instance of infant, 161, 183.
appointment of, on application of plaintiff, 162, 475.
application, how made, and evidence, 161 n., 162, 475.
service of notice, 162 ; when appearance has been entered, 162, 476.
appointed by the court, 161 n.
infant should be consulted, 161 n.
to non-resident infants, 161 n.
compensation to guardian, 161 n.
acceptance of appointment, 161 n.
not on nomination of the plaintiff, 161 n.
who appointed, 163, 475.
co-defendant may be, 161 ; if he has no adverse interest, 161.
consent of, to deviation from ordinary procedure, sanction of court to, 163.
costs, when liable for, 163.
costs of solicitor appointed, 162 n., 1457.
death of, proceedings on, 163, 1358.
defence conducted by, 160.
duty of, 168 and n.
entry of order appointing, at Record and Writ Clerk's office, 163.
error to enter decree against infant without assigning guardian, 161 n.
ineligible, who, 161.
jurisdiction, for infant out of, appointment of, at instance of infant, 452.
of plaintiff, 162.
married woman cannot be, 161.
married woman, required for, if an infant, 163, 183, 754.
husband appointed, if they defend jointly, 163.
notice of the decree, appointment of, for infant served with, 437.
petition, when infant responded to, 161, 1607, 1608.
application, how made, and evidence in support, 161 and n., 1607, 1608.
plaintiff cannot be, 161.
plea by, on behalf of, infant, 753.
proceedings in cause cannot be taken until appointment of, 162, 538.
removal of, 163.
service of copy of bill on guardian not necessary, 161 n.
case against infant, must be proved, 163 n.
- GUARDIAN AD LITEM (OF PERSON OF UNSOUND OR WEAK MIND),**
answer of, 175, 176, 178, 538, 731, 783, 737, 754, 755, 841 ; (and See ANSWER.)
heading of, 731 ; how sworn, and jurat to, 753, 754.
oath or signature, when put in without, 737, 753, 754.
read against defendant, whether it may be, 178, 841.
appearance necessary, before appointment, by defendant, 177.
appointment of, at instance of defendant, 177 ; application, how made, 176 ; evidence in support of, 177 ; who appointed, 176.
appointment of, on application of the plaintiff, 177, 475, 476, 498, 500.
application, how made, and evidence, 177, 475, 476.
service of notice of, 177, 475.
order for appointment made in Chancery, 177.
who appointed, 176, 475, 476.
bid at sale under decree, not allowed to, 1271 n.
consent of, to deviation from ordinary procedure, sanction of court to, 178.
costs of, when defendant ordered to pay, 177.
costs of solicitor appointed, 177 n., 1458.

[The references are to the star paging]

GUARDIAN *AD LITEM*, ETC. — continued.

death of, proceedings on, 176.
 defence conducted by, 176; when committee adversely interested, 176.
 discharge of order appointing, at defendant's instance, 177; at plaintiff's, 177.
 inquiry as to competency, when directed, on application for, 177.
 entry of order appointing, at Record and Writ Clerk's office, 178.
 ineligible, who, 178.
 jurisdiction, appointment of, where person out of, 452.
 notice of the decree, appointment of, for person served with, 437.
 petition, when respondent to, 176, 1607, 1608.
 application for, how made, and evidence, 176, 1607, 1608.
 plea by, on behalf of infant, 753, 754.
 prisoner, appointment of, where, 503.
 proceedings in cause, cannot be taken until appointment of, 177, 538.

GUARDIAN AND WARD,

accounts between, when opened, 667.

GUERNSEY (ISLAND OF),

not beyond seas within 21 Jac. 1, c. 16 (statute of limitations), 618.

HABEAS CORPUS (WRIT OF),

ad testificandum, issue of, 909.
 answer to bring up defendants in contempt, for want of, 490, 491, 495.
 "attached and imprisoned," on return of, by sheriff, 490, 491.
 "detained," on return of, by messenger, 490; by sergeant-at-arms, 494; by sheriff, 490, 491.
 issued, how, 491.
 order for, how obtained, 491.
 pauper, in case of, 501.
 return day of, 491.
 time for bringing defendant up under, 491.
 costs on bringing up contemnor by, 508.
 decree or order, in case of disobedience to, on sergeant-at-arms' return, 1048, 1049.
 filing of, when returned, 491 n.
 misdemeanor, to bring up defendant in jail for, 498.
 new writ, how issued, when, 492 n.
 non-payment of costs, in case of contempt for, 1454.
 pauper defendant, to bring up, in contempt for want of answer, 502.
pro confesso, on order to take bill, 492.
 issued, how, 492; order for, 492; return, time of, 492.

HÆC VERBA,

documents not to be unnecessarily stated in, 813, 686.
 documents, when set out in, in bill, 863; in answer, 725, 733.

HALF-PAY,

receiver of, not appointed, 1730.
 sequestration, not taken under, 1058.

HARLEIAN LIBRARY,

record from, provable as exhibit at hearing, 882.

HEAD OF CORPORATION,

corporations cannot be sued without their head, 22, 143.
 corporations aggregate cannot sue in name of head alone, 21.
 death of, not an abatement, 23; unless of corporation *sole*, 23, 1538.
 revivor in such case, 23, 1538.

HEARING,

defined, 972 n.
 generally, 971-985; abatement after, but before judgment, effect of, 84, 1009 n, 1017.
 adjournment of, 975.
 (See ADJOURNMENT OF CAUSES.)

advance of, 971, 974.

(See ADVANCE OF CAUSE.)

amendment of bill, leave for, when given at, 405, 417-419.

(See AMENDMENT OF BILL.)

appearance by counsel at, effect of, 536.

appearance of party not duly served at, 589.

appearance of person not a party at, 539, 980.

[The references are to the star page.]

HEARING — continued.

attendance of solicitor at, 978; penalty for neglect, 978.
benefit of defence raised by answer can only be had at, 715.
bill and answer, proceedings at, 982; dismissal on, costs of, 982.
briefs on, 977 n.

(See *BRIEFS*.)

certainty in bill, objection for want of, cannot be raised at, 871.

contempt of plaintiff, no objection to, 980.

costs of cause, only dealt with at, 794, 1380, 1410.

usually not given at original, 1876.

given at, include subsequent, unless expressly excepted, 1368, 1376.

cross-bill, direction to file, when given at, 1550.

death of defendant, after, but before judgment, effect of, 1544.

dismissal of bill at, for inadequacy of value, 329; for non-appearance of plaintiff, 979; where cause set down by defendant, 979.

evidence read from printed copies at, 981.

examination, and cross-examination, of witnesses at, 911, 913, 915, 976, 981.

exhibits, proving at, under order, 881-885.

(See *EXHIBITS*.)

fixing day for, after notice to produce witness for cross-examination, 914, 915.

viva voce, where order to take evidence, 912.

form of decree at, when defendant does not appear, 978.

when cause set down by defendant and plaintiff does not appear, 979.

frauds, statute of, oral plea of, when allowed, 656, 712.

injunction, when granted at, or after, though no prayer, 1614, 1679-1688.

jurisdiction, objection for want of, may be taken at, when, 555, 629.

limitations, statutes of, oral plea of, at, when allowed, 656, 712.

multifariousness, objections for, can only be taken by court at, 346, 714.

office copies of affidavits and depositions must be in court at, 981.

papers for use of court at, 977.

parties, objections for want of, may be taken at, 290, 291.

partition, how affected at, 1151.

penalty for non-attendance of solicitor at, 828.

plaintiff cannot be heard by counsel and in person, 981.

pleadings read from printed copies, 981.

private, when directed, 984 and n.

pro confesso, when bill ordered to be taken, 528.

day on which it may be heard, 518.

appearance of defendant, on what terms allowed at, 528.

proceedings, where all parties appear, 980.

defendant, non-appearance of, in cases of, 978.

plaintiff, non-appearance of, in case of, 979; where cause set down by defendant, 979.

subpoena to hear judgment, when not duly served, 984, 979.

production of documents, how obtained after, 1825

purchase for value without notice, oral plea of, at, not permitted, 712.

receiver granted at or after, though not prayed, 1734.

relator not heard in person, at, 981.

replication allowed to be filed *nunc pro tunc* at, when, 983.

sale of real estate, only directed at, formerly, 1264.

short cause as a, 972, 973, on motion for decree, 825.

stamps, objection for want of, at, and remedy for, 880, 981.

stand over, when directed to, because evidence defective, 857, 858.

to allow office copies to be properly signed, 871.

to allow document to be stamped, 981.

traversing note, proof of service of, at, 516.

trial of question of fact, when directed at, 1072.

undertaking to set cause down for, implies service of subpoena to hear judgment, 980.

viva voce, when evidence taken, 976.

will, when allowed to be proved at, 883.

appeal or rehearing, of, 1484, 1485.

affidavit of service of order to set down, course where informal, 1484.

amendment of bill at, 418, 1489.

appellant, in case of non-appearance of, 1484.

begin, who entitled to, 1484.

further consideration, on appeal from order on, 1484 n.

motion for decree, on appeal from order on, 1484 n.

briefs on, 1484 n.

[The references are to the star reading.]

HEARING — *continued.*

- counsel's fees on, 1484 n.
- heard, who entitled to be, on, 1485.
- power of court at, 1459 n.
- respondent, in case of non-appearance of, 1484.
- appeals to House of Lords, how conducted, 1502.
 - production of documents at, 1499.
- demurrer, of, where both parties appear, 596.
 - where defendant does not appear, 596; where plaintiff does not, 596.
 - advancing, 595.
- papers for use of court at, of, 595.
- discovery, bill of, not brought to, 810, 1558.
- exceptions for insufficiency, where both parties appear, 768, 769; where defendant does not, 768; where plaintiff does not, 768; where neither party appears, 768.
- papers for use of court at, 768, 770.
- second or third answer, where to, 771; papers for use of court at, 770.
- further consideration of cause, 1373, 1374.
 - attendance of solicitor at, 1373.
 - briefs on, 1373 n.
 - affidavit of service of notice on parties, 1373; on purchaser, 1374.
 - papers for use of court at, 1373.
 - persons entitled to attend at, 1373, 1374.
- further hearing after trial, of, 1146.
 - papers for use of court at, 1147.
- interpleader suit, of, 1568, 1569.
- motions, of, 1597–1599.
 - to dismiss, for want of prosecution, 807, 808.
 - where neither party appears, 807.
 - papers for use of court at, 825.
- motion for decree, of, 826.
 - where either or both parties neglect to appear, 826.
 - papers for use of court at, 825.
- perpetuate testimony, bill to, not brought to a hearing, 810, 1573.
- petitions of, 1607, 1608.
 - cross-petitions, 1608.
 - non-appearance of parties, in case of, 1609.
 - priority, of, when answered for the same day, 1608.
- plea, of, where both parties appear, 694.
 - where defendant does not, 693; where plaintiff does not, 694.
 - allegations of bill, how taken on, 694.
 - amendment of bill, when allowed at, 420, 698, 699.
 - order made on, 693, 694.
 - papers for use of court, 698.
 - taxation, to review, 145.
 - supplemental suit, of, 1535, 1537.
 - trial of question of fact, on, 1096–1110.

(See **FACT, QUESTION OF.**)

HEARSAY,

- evidence, not admissible, 861.

HEATHEN,

- answer of, how taken, 735, 736.
- form of commission to take, 749.

HEIR,

- absence of, not affected by decree made in, 232.
- administration decree, at instance of, on serving co-heir, 233, 432, 483.
- admission of, will established on, 875.
- bill by heir and next of kin for account of real and personal estate, multifarious, 344, 345.
- co-plaintiff, amendment at hearing, by making a defendant, 418.
- co-plaintiff, should not be with devisee, 233.
- costs of, 710, 1148, 1149, 1382–1386, 1436.

(See **COSTS.**)

- creditor's action restrained after decree, on application of, 1614.

- devisavit vel non*, right of to issue of, 876, 1074, 1075.

(See **DEVISAVIT VEL NON, ISSUE OF.**)

- debts, when party to suit to execute trusts of deed for payment of, 232.

[The references are to the star paging]

HEIR — continued.

- disinherited, rights of, to production, 1831 n.
- grantor's necessary party to information for charity, 281.
- injunction against, made perpetual, after establishment of will, 1682.
- inquiry for, when directed, 1202, 1208; in charity suit, 261; costs of heir, when allowed, 1213.
- materna*, *ex parte*, not entitled to discovery of title of claimant, *ex parte paterna*, 579.
- mortgagee, of, may redeem estate, 221.
- mortgagee, of, when necessary party, 193, 216; when not, 193, 216.
- mortgagee, of, parties to foreclosure suit by, 221.
- not to be found, Attorney-General made defendant, 135 n.
- obligor, of, statements in bill against, 322.
- party, when a necessary, 216 n., 249 n., 261, 262.
 - to suit by specialty creditor, 282.
 - to suits to annul wills, 109 n.
- pedigree of, need not be set out in bill by, 320.
- personal representative necessary party to suit by, for widow to elect, 282.
- plea that defendant is not, 681; that plaintiff is not, 604, 630.
 - form of plea, 630 n.
- purchaser, of, when necessary party to suit for specific performance, 285.
- receiver, when not granted on application of, against devisees, 1725.
- revivor against, 407 n.
- sequestration, revivor of, against, 1080.
- will, necessary party to suit to establish, 232.
- will, not necessary party to suit to execute trusts of, 283.
- will, established against, in Court of Probate, 232 n.

HEIRESS,

- married woman, will not established on admission in separate answer, of, 185, 876.

HEIRLOOMS,

- receiver, when appointed of, 1731.

HOLIDAYS,

- not reckoned in computation of time, when, 354.

HONOR (ATTESTATION OR PROTESTATION OF),

- answer, when put in upon, 735, 738, 746.
- costs, reading of, on question of, 843, 1380.
- omission of, must be expressly waived, 784, 785.
- answer put in without, how regarded, 738.
- order to dispense with, how obtained, 738.
 - exceptions do not lie to, 738.
- fee on taking, 1441 n.
- plea, when put in upon, 688.

HOSPITAL (MASTER OF),

- revivor of suit by, 28.

HOSTILITY,

- person, allegation of, when scandalous, 348.

HOUSE,

- partition of, how effected, 1156, 1157.

HUNDRED,

- bailiff may execute warrant out of his, 467.

HUSBAND,

- abjured the realm, wife may be sued alone, 178.
- accounting party, of, generally necessary party, 253 n.
- agreement by, to assign wife's chattel real, effect of, 126.
- alien abroad, of, wife may sue alone, 88; may be sued alone, 179.
- answer, joint, of husband and wife, effect of, 181, 185, 188, 498, 523, 524, 781.
 - (See ANSWER.)
- contempt for want of, how cleared, 181.
- heading of, 731.
- pro confesso*, bill taken, for want of, 528.
- process for want of, 499.
- answer, separate, of, when necessary, 180, 499, 500; effect of, 185.
- order for, how obtained, 180, 499.
 - should be obtained before his answer filed, 180, 181, 500.
- answer of, wife need not join in, 181, 499.
- answer, separate, of wife, when husband should obtain order for, 181.

[The references are to the star paging.]

HUSBAND — continued.

- appearance, entry of, for self and wife, 537.
- proceedings in default of, 476.
- assignee of, wife's equity to a settlement against, 104.
- assignment by, of wife's chattel real, effect of, 123, 125, 127.
when not capable of vesting during coverture, 127.
- assignment of, of wife's *choses in action*, effect of, 119, 121.
on her equity to a settlement, 122.
- wife's concurrence in, unless under statute, immaterial, 122.
- assignment by, of land in possession of wife under judgment, 125.
or under decree for payment of money, 125.
- assignment of wife's mortgage for years, 125.
of her mortgage in fee, 125.
of term, assigned with his consent, in trust for her, 125.
of her term upon condition, 126.
- attainder of, effect of, 87.
- banished, wife may be sued alone, 88 n., 178 and n.
- bankruptcy of, settlement by court in case of, 102.
effect of, on promissory note given by wife *dum sola*, 116 n.
on wife's right by survivorship, 121, 125.
- chattels real, of wife, his interest in, 123–128.
- choses in action* of wife, what a sufficient reduction into possession of, 115–122.
(See REDUCTION INTO POSSESSION.)
- civil death of, effect of, 87.
- co-defendant with wife, 109, 178, 179; when not, 178, 179.
- consent, wife's, to payment to him of her fund, when required, 90, 91, 97.
(See MARRIED WOMAN.)
- co-plaintiff with wife, when, 109; effect of joinder as, 108.
- death of, effect of, when defendant, no abatement, 188, 1541.
widow, taking new interest, not bound by former answer, 188.
- death of, effect of, on joint suit, 113; revivor on, 113, 114, 1541.
before execution of settlement, effect of, on survivorship, 107.
before revivor, effect of, 118.
- defendant to wife's suit, usually made, 109.
- discovery against, wife not made defendant to obtain, 184.
- executrix, of, receiver against, 1722.
- exiled, wife may be sued alone, 178.
- felony, charge of, wife not bound to answer so as to expose him to, 184.
- formal defendant, service of copy of bill on, 429.
- guardian *ad litem* of wife, infant defendant, when appointed, 163, 188.
- ill-treatment by, discovery of subsequent, not required in suit to establish ante-nuptial agreement, 570.
- insolvency of, plea of, to suit by husband and wife for her annuity, 108 n.
- interest of, in wife's real estate, wife not necessary party to suit to charge, 189 n.
- joint suit, when he may continue without administering to wife, 115.
- jurisdiction, out of the, when suit prosecuted against wife alone, 110 n., 179; leave for, necessary, 179 n.
service of the bill upon, 452.
- lunatic, separate answer of wife, how obtained, when he is, 181, 500.
- misconduct of, effect of, on settlement, 104.
- mortgage by husband and wife, resulting trust in, 125.
- ne exeat*, granted against, at instance of wife, 1704, 1705 n.
- next friend of wife, effect of suit as, 109.
- notice of decree, service upon, of, 488, 434.
- party to wife's suit, 87 n., 109 n., 179 n.
- payment to, of wife's fund, valid if before suit, 101; effect of order for, 118.
- payment to, of wife's fund, not ordered without her consent, 90, 98; though settled to her separate use, 100.
- personal representative of, generally necessary party, 258.
- pro confesso*, proceedings to take bill, against, 528.
- proof in bankruptcy by, for wife's debt, effect of, 118.
- release by, plea of, in suit by husband or wife, for separate estate, 109 n.
- receipt of, or of his agent, a reduction into possession, 117.
- released by, of wife's *choses in action*, effect of, 122.
- rents reserved on under-lease of wife's term, when entitled to, 127.
- satisfied term, attending wife's inheritance, does not go to him, 125.
- separate estate, may sue wife for, 109.
- service of the bill upon, when he and wife defendants, 445.

[The references are to the star paging.]

HUSBAND — continued.

- affidavit of service in such case, 445 n.
- settlement of wife's property against, 101-108.
- suit by, against wife, when permitted, 179; when not, 179.
 effect of, 179 n.
- transfer of wife's property by, when restrained, 1652.
- transported, wife may be sued alone, 178.
- under-lease by, of wife's chattels real, effect of, 128.
- wife's answer read against, when, 184.
- wife's debts, liability for, 189 n.
- wife, necessary party to a suit for her property, 90.
- wife's suit, a necessary party to, 87; when not, 87, 109 n., 179 n.
- wife as creditor of, 109 n.

HUSBAND AND WIFE,

- answer of, effect of, 185; heading of, 781.
- contempt of husband for want of, how cleared, 181.
 pro confesso, bill taken for want of, 523.
 process for want of, 499.
- co-plaintiffs, when she sues as personal representative, 90.
 in suit for her *chose in action*, not settled to separate use, 109.
- costs of suits between, 1404.
 one set allowed between, when, 730, 1404, 1432.
- death of, effect of, on joint suit, 113.
- one person at law, 87.
- payment to, effect of order for, 118.
- paupers, may sue as, 39; may defend as, 180 n.
- plea by, title of, 681; when received, though only sworn by husband, 681.
- suit by, is the suit of husband, 108.
- suit by, effect of death of either on, 113, 114.
- suit by, plea of, when bad to subsequent suit by her, 108, 636.
- subpoena* for costs against, 1452.
 to hear judgment, reckoned as one person in, 968.
- subpoena ad testificandum*, reckoned as two persons in, 907.

IDENTITY,

- averment of, does not render oath necessary in plea, 687.

IDIOT AND IDIOCY. (See LUNACY, LUNATIC, UNSOUND OR WEAK MIND, PERSON OF.)

IGNORANCE,

- supplemental answer permitted in cases of, when, 780.

ILLEGAL ACT,

- injunction not in general granted to restrain, 1644 n.

ILLEGAL PURPOSE,

- communications made with view of effecting, not privileged, 578.
 allegations of the bill in such case, 578.

ILLEGITIMACY,

- child, of, parent, when bound to give discovery as to, 564.
not presumed, when access possible, 851.
proof of, 851.

ILLEGITIMATE PERSON,

- conspiracy to set up, discovery must be given as to, when, 565.
estate of, not represented by Attorney-General, 202.

IMBECILE PERSON,

- answer of, without oath or signature, not received, 737.

(See UNSOUND OR WEAK MIND, PERSON OF.)

IMMANURABLE,

- seisin of things, how alleged, 362.

IMMATERIALITY,

- objection on the ground of, to giving account when assets admitted, 718.
 when instrument impeached for fraud, 708.
 when questions relate to defendant's private affairs, 719.
objection on account of, raised by answer, 716, 717; by demurrer, 570.

IMMORALITY,

- particular acts of, allegation of, when scandalous, 848.
 when provable under general charge, 848.

[The references are to the star paging.]

IMPERTINENCE,

affidavit, in, 895 ; application for costs occasioned by, 895.
 answer, in, 733, 759 ; in heading of, 782 n. ; in schedule to, 727 ; to amended bill, 729, 776 ; in further answer, 776.
 bill, in, 347, 348, 349.
 Chambers, in proceedings at, remedy for, 351.
 costs occasioned by, 850, 895.
 application for, when to be made, 350, 895.
 definition of, 849 n. ; not a ground for demurrer, 849.
 how taken advantage of, former practice, 350 ; present practice, 350.
 exceptions for, abolished, in England, 850, 759.
 practice in United States, 759 n.
 separate for impertinence and scandal not allowed, 759 n.
 overruled if expunging will leave residue false or unintelligible, 759 n.
 not expunged unless clear case, 759 n.
 should describe the passages alleged to contain, 759 n.
 reference of answer for, 759 n.
 petition, in, 1605.
 plea in, 686.
 trivial, remedied by costs, 354 n.

IMPOUNDING DOCUMENTS,

examination of expert, for, 1209 n.

IMPRISONMENT,

costs, for, 505 n.
 creditor, of, not a disability within statute of limitations, 647.
 disability, within statute of limitations, not a, 652 n.

IN SUBSIDIUM,

answer in, definition of, 625.

INCIDENTS,

certainty required in alleging, 370.

INCOME TAX,

maintenance, when deducted from allowance for, 1380.
 purchase-money, when deducted from, 1278 n.

INCONSISTENT DEFENCES,

by answer, not allowed, 713 ; effect of setting up, 713.

INCONSISTENT TITLE,

discovery as to title of person claiming under, not required, 579.
 persons claiming under titles inconsistent with plaintiff's should not be made parties, 229.
 effect of joinder of, as co-plaintiffs, 233.

devises and heir-at-law, 233.

settlor and purchaser in suit to avoid settlement, 234.

united in one plaintiff, may be, 234 n.

INCONTINENCE,

acts of, provable under charge of lewdness, 853.

INCUMBENT,

bishop and sequestrator not necessary parties to suit for tithes by, 208.
 lunatic, necessary party in suit by bishop and sequestrator for tithes, when, 208.

INCUMBERED ESTATE,

parties to suit for sale of, and execution of trusts of surplus, 214.
 sale of, 1264 ; form of order for, 1264.

INCUMBRANCERS,

advertisements for, when issued, 1214.
 appeal for costs by, permitted, 1464.
 costs of, 1385-1394.

(See Costs.)

equitable, receiver when appointed at instance of, 1716.

intermediate, not bound by foreclosure against mortgagor for, 277, 660.

pendente lite, not necessary parties, unless for conveyance, 281.

made parties by supplemental proceedings, 281.

prior, not necessary parties to bill for foreclosure or sale of estate, 214 and n., 279.

plaint, receiver at instance of, 1716 ; form of order, 1788.

[The references are to the star paging.]

INCUMBRANCERS — *continued.*

sale, consent to, by, effect of, 1265.
 interest, right to, 1265.
 production of title-deeds by, after sale, 1265.
 subsequent to plaintiff necessary parties to suit to establish charge or foreclose, 277; whether legal or equitable, 278; if specific, 279.
 surplus, not necessary party to suit for execution of trusts of, 214, 257, 258.
 tail, upon estate, when necessary parties, 228.

INCUMBRANCES,

inquiry as to, on legacies, 1214.
 interest on, how kept down, by receiver, 1751.
 interrogatory as to, in foreclosure suits, 277 n.
 payment off of, out of purchase-money under sale by court, 1278.

INDEFEASIBLE TITLE,

sale with, under Land Transfer Act, 1267.
 registration of declaration of title as, 1865 n., 1868, 1870.

INDIA,

personal representative in, commission allowed, 1235.
 receiver of property in, where appointed, 1781.

INDIAN DEBENTURES,

deposit in court of, how effected, 1788.

INDICTMENT,

proceedings on, not restrained unless applicants plaintiffs in equity, 1620.

INDORSEE,

of bill of exchange, when not necessary party, 207.

INDORSEMENT,

attachment, on writ of, generally, 464.
 answer, for want of, 489.
 appearance, for want of, 465.
 costs, for non-payment of, 1453.
 decree or order, for non-obedience to, 1046.
 bill, on copy for service of, 440, 441.
 amended bill, when necessary in case of, 446.
 appearance, necessity for, indicated by, 446, 583, 588.
 Attorney-General, not necessary in case of, 441.
 corporation aggregate, in case of, 441.
 foreign state, in case of, 441.
 jurisdiction, in case of person out of the, 441, 453.
 peer, in case of, 442, 445.
 printed, need not be, 441.
 teste to, 442.

certificate of, Record and Writ Clerk to set down cause, on, 965 and n.
 counsel's, of order of court, not privileged, 571, 1834.

decree or order, on copy for service of, form of, 1043.

assistance, writ of, not necessary, where enforced by, 1043 n., 1063.

corporation aggregate, in case of, 1044.

mistake in, effect of, 1043 n.

privileged person, in case of, 1044.

elegit, on writ of, 1064.

fieri facias, on writ of, 1064.

fieri facias de bonis ecclesiasticis, on writ of, 1065.

inquiry, on writ of, 1141.

interrogatories, on, 482.

jury panel, on, of names of jurors, 1110.

ne exeat regno, on writ of, 1702, 1709.

notice of the decree, on, 437.

petition of appeal to House of Lords, on, 1494.

pleadings and proceedings, on, general rule as to, 454.

registrar's appointment, of service of, to settle minutes, 1012; to pass decree or order, 1015.

registrar's, on admissions, 849, 1010; on exhibits proved under order, 884.

new habeas corpus, where issue of ordered, 492 n.

sequestrari facias, on writ of, 1065.

supplemental statement, on, 538.

verdict of, on record for trial, 1110.

writs, on, general rule as to, 453, 454.

[The references are to the star paging]

INFANCY,

demurrer on ground of plaintiff's, 556.
disability arising from, in case of plaintiff, 66 ; when it terminates, 67.
 plea of, 630 ; of defendant's, 130, 160.
disability arising from, in case of defendant, 130, 160.

(See INFANT.)

INFANT,

absolute decree against, without giving day to show cause, 165 n.
admissions cannot be made on behalf of, 170.
admission of ancestor, binding on, 171, 839.
adoption of suit by, effect of, 78.
advancement of, proceedings for, 1361, 1362.
age, coming of, not an abatement, 78, 79 ; if of co-plaintiff, 79.
amendment of bill of, affidavit for, by whom made, 415.
 leave for, when given at hearing, 73, 418.
answer of, 169, 170, 175, 498, 753, 839, 840.
 admission, cannot be read against infant as, 169, 839.
 unless adopted on attaining twenty-one, 841.
 form of, 169 ; heading of, 731 ; and jurat to, 754.
 guardian, put in by, 169, 753, 754 ; read, against whom, 841.
 insufficiency, cannot be excepted to for, 169.
 new, on attaining twenty-one, 170.
 application for leave to put in, should be made without delay, 170.
 consequences of putting in, 175.
 oath or signature, how put in without, 169 n., 754.
 proceedings in default of, 498.
 required, should not be, 169.
 sworn, how, 169 n., 753.
 voluntary, when to be put in, 169.
appeal by, as pauper, 1483.
appearance of, entry of, 162, 538.
 by plaintiff for irregular, 162 n., 460 n., 476.
 proceedings in default of, 475, 476.
attainment of twenty-one, not an abatement, 78.
bankruptcy of plaintiff, cannot dispute without notice, 65.
bill, service of copy on, how effected, 444.
birth of, supplemental order on, 1254 n.
case for court of law, could not concur in, 74.
cause, showing, against decree, by infant, 178-175.

(See DAY TO SHOW CAUSE. DECREES AND ORDERS.)

Chambers, proceedings in, with respect to, 1346-1365.

Chancery, jurisdiction of Court of, over, 1346.

 whether infant must have property, 1348.

compromise of suit, power of court to sanction, 164 n.

concurrent suits, on behalf of, staying, 69, 70, 797.

conversion of property of, 1365.

conveyance by, under order for raising fund, 1345.

 vesting order now usually made, 1845 n.

conveyance of interest of, settled by the judge, 1342.

co-plaintiff, repudiation of suit by, 78.

 striking out name of, 72, 79.

copy of the bill, process by service of, not applicable to, 428.

costs of, 79-82, 1455.

costs, not liable to, on repudiation of suit, 78.

cross-bill of, effect of dismissal of, 174.

day to show cause, when given, 73, 165 n., 165-168, 171.

(See DAY TO SHOW CAUSE. DECREES AND ORDERS.)

decree in his own suit binding on, 73.

decree against adult as if an infant, not binding, 160 n.

decree against, bound by, 164.

 although no inquiry whether for his benefit, 164, 168.

 except in case of fraud, collusion, or error, 164, 1584 n. (a).

 how decree impeached in such case, 164, 174, 1584.

 final order, when required in case of, 165, 996, 997.

decree by consent, not made in case of, 974.

defence of, conducted by *guardian ad litem*, 160, 437 ; although a married woman,

163, 183.

(See GUARDIAN AD LITEM OF INFANT.)

[The references are to the star paging.]

INFANT — continued.

- defendant, usually not described as infant, in bill, 160.
- demurrer of, filing of, 591.
- deviations from practice, when binding on, 74, 163
- devisavit vel non*, issue of, may be waived on behalf of, 163.
- discovery by, 74 n., 1824 n.
- domiciled abroad, form of order for payment out, in case of, 1798.
- en ventre sa mère*, waste may be restrained at suit of, 67, 1629, 1630.
- error in decree against, what is, 164, 165.
what is not, 168.
- estate of, conversion of, from personal to real, when permitted, 1365.
how effected, 1365.
- evidence against, necessary, 169, 170 n.; defect in, supplied by inquiry, 858, 859.
- executor, special administration granted, during minority, 205.
party to suit against co-executors, when, 250.
- facts, all necessary, must be proved against, 170.
- father's power over, 68 n., 70 n., 108 n.
- felon, assignment of custody of, 1868.
- forma pauperis*, suit by, 39, 42 n.
- guardian, appointment and removal of, 1328, 1346–1358.
(See GUARDIAN OF INFANT.)
- guardian *ad litem*, of, (see GUARDIAN AD LITEM OF INFANT.)
- heir, waiver of issue, *devisavit vel non* by, 1075.
- inheritance of, court will not bind by discretionary act, 72.
- inquiry whether suit is for his benefit, 70, 80.
decree in suit, not directed after, 71.
dismissal of bill without, if suit clearly non-beneficial, 70, 71.
next friend, not granted on application of, 72, 810.
except in another suit, 72.
- inquiry which of several suits is most beneficial for infant, 69.
amendment under order of course, pending, irregular, 411.
decree in one suit not directed after, 70.
least beneficial suit stayed, 70; but if merits equal, priority prevails, 70.
order for, how obtained, 70, 634; made in all the suits, 70.
stay of proceedings, not of itself a, 70.
- intruder on estate of, jurisdiction of court over, 1862.
- jurisdiction of court over, 1348.
- jurisdiction, out of, allowed to come in under decree, when, 153, 154.
service of bill upon, 452.
- jurisdiction, out of, power of court with respect to, 1347–1349.
- jurisdiction, out of, maintenance how paid, in case of, 1361.
- latitude allowed in cases of, 73, 74, 384.
- lease of land of, power of guardian to grant, 1364.
- legacy of, costs of suit for, 81, 1429.
- legacy of, payment into court under Legacy Duty Act, 81.
- legacy of, when paid to its father, 1798, 1802.
- lien of solicitor, in suit on behalf of, 81.
- limitations, statute of (21 Jac c. 16), does not run against, 647.
- maintenance of, proceedings for, 8, 164, 1348, 1356–1362.
(See MAINTENANCE.)
- management of property of, 1362–1365.
- married woman, examination of, not taken, 98.
- mistake in form or conduct of suit, not bound by, 73.
- mortgagor, sale when directed instead of foreclosure, 1265, 1266.
- mother's power over, 68 n., 97 n.
- motion on behalf of, how made, 77, 1595.
- ne exeat*, granted on affidavit of, 1706.
- new defence of, application for leave for infant to make, how made, 173.
consequence of making, 175.
- discovery, bill of, may file, in aid of, 174.
- majority, cannot be made until attainment of, 174.
- next friend, required in suit of, 68.
and all applications on behalf of, 68 n.
- bill without, dismissed with costs, to be paid by solicitor, 68.
- leave to amend, when given, 68.
(See NEXT FRIEND OF INFANT.)
- notice of the decree, service of, upon, order necessary for, 434.
- application, for directions as to, how made, and evidence, 434.

[The references are to the star paging.]

INFANT — continued.

- appointment of guardian *ad litem*, after, 437.
 - service, how effected, 434, 435.
 - partition of estate of, former practice in case of, 73 and n., 166, 1151; costs of suit, 1153; provisions of Trustee Act, 1850, as to, 166, 1161.
 - party, when necessary, 68 n., 165 n., 229 n.
 - pauper, appeal, at instance of, 1482; suit on behalf of, 87, 74, 75.
 - payment of fund of, to father, when directed, 1802.
 - petition on behalf of, 1604.
 - plaintiff, name of, when struck out as, and inserted as defendant, 72, 427.
 - plea on behalf of, how put in, 758.
 - pro interesse suo*, examination granted at instance of, 1059.
 - proceedings on behalf of, may be instituted by anybody, 1347.
 - property of, not chargeable with costs under 23 & 24 Vic. c. 127, § 28, 1846.
 - receiver appointed without suit on behalf of, 1354, 1729, 1733.
 - recital in his own deed, when not bound by, 170.
 - repudiation of suit, effect of, 78, 79; where a co-plaintiff, 79.
 - respondent to petition, appointment of guardian *ad litem* for, 161, 1607.
- (See **GUARDIAN AD LITEM OF INFANT.**)
- sale of estate of, when not directed under ordinary jurisdiction, 168.
 - foreclosure, when directed instead, 187, 168, 1266.
 - partition suits, in, 1163 n.
 - sanction of court when required to institution of suit on behalf of, 310.
 - service on, of bill, how effected, 444.
 - solicitor of, acts of, how far binding, 74, 163.
 - special case, may concur in, 74.
 - specific performance, cannot sue for, 68, 231.
 - submissions, improper, not bound by, 78, 74.
 - substituted service in case of, 448.
 - suits against, 160–175; on behalf of, 70–89.
 - title-deeds of, next friend's solicitor has no lien on, 1842.
 - title of suit, change of, on coming of age, 78 n.
 - traversing note cannot be filed against, 169 n., 515.
 - Trustee Acts, effect of, where conveyance required from infant, 165 n., 166.
 - undertaking as to damages, how given on behalf of, 1708, 1709.
 - ward of court, how constituted, and jurisdiction over, 1347, 1354, 1355.
- (See **WARD OF COURT.**)

will, execution of, when it must be proved against infant heir, 170, 171.

INFANT CUSTODY ACTS, 1862–1864.

- application, how made under, 1862.
- custody of mother, Act not applicable where children in, 1863.
- next friend, not necessary on mother's application, 1862, 1863.
- object of Act, 1863.
- order, when and when not made, 1863.
- pauper may apply under, 1862, 1863.

INFERENCES (LEGAL).

- answer, after statement of, in, facts cannot be used to establish a different defence, 712.
- answered, need not be, 712, 719.
- demurrer, does not admit, 545.
- pledged, should not be, 872, 545, 712.

INFERIOR COURT,

- office copy of record in, provable as exhibit at hearing, 882.
- plea of pendency of suit for same matter in, when good, 633.

INFORMAL INSTRUMENT,

- hæc verba*, should generally be set out in, 368.

INFORMATION,

- abatement of, none on death of relator, 13, 14.
- amendment of, 415, 422, 423.

(See **AMENDMENT OF INFORMATION.**)

- appropriate form of suit, when, 2.
- authority for, proof of, 8 n.
- charities, on behalf of, 8; Charity Acts, under, 10.
- distinct charities, for, when multifarious, 343.
- heir of grantor, when necessary party to, 261.
- costs of, 11, 12, 14.

[The references are to the star paging.]

INFORMATION — continued.

- costs of, one defendant may be ordered to pay another defendant, 12.
- court, filed in what, 6.
- Crown, suit on behalf of, or of those under its protection, commenced by, 2, 7, 8, 305.
- where rights of, not immediately concerned, 7.
- crown lands and revenues, relating to, commenced in what court, 5, 6.
- file, taken off, because relator indemnified by solicitor, 13 n.
- filing of, 899.
- general nature of, 2.
- grantee from Crown of *chose in action*, on behalf of, 7.
- idiots and lunatics, on behalf of, 9, 82.
- intrusion, for, 6.
- motion in, on behalf of whom made, 1595.
- nuisance, public, when filed in case of, 1636.
- parens patriæ*, on behalf of Crown as, 8.
- prosecution, not dismissible for want of, if no relator, 16.
- public purposes, respecting property appropriated to, 8.
- relators in, 10–16.

(See RELATOR.)

- signature of Attorney-General and counsel to, 311 n., 399.
- to amended, 311 n., 422.

Solicitor-General, when defendant to, 140.

Superior Courts, by whom commenced in, 7.

venue, 6 n.

(See ATTORNEY-GENERAL.)

INFORMATION (AT LAW),

proceedings on, not restrained, unless applicants plaintiffs in equity, 1620.

INFORMATION,

answer, as to, without any statement as to belief, insufficient, 723.

INFORMATION AND BELIEF,

statements founded upon, 360 n., 1663 n. (a).

 in answer, equivalent to admission, 840; *secus*, information only, 840.

INFORMATION AND BILL,

abatement of, 18, 14.

appropriate, when, 10, 11.

bill may be dismissed, and information retained, 11.

converted into information only, when, 11.

plaintiff in, who should be, 11.

INHABITANTS OF A PARISH,

one may sue on behalf of himself and others, when, 239.

INHERITANCE,

infant's, court will not bind, by a discretionary act, 72.

married woman's, not bound by joint answer of her and her husband, 185.

 or her or his separate answer, 185.

 bill relating to, not taken *pro confesso* against her, 185.

 resulting trust of satisfied term in, 125.

new trials of issue affecting, 1124, 1125.

owner of, necessary party, if it is to be bound, 262.

 jurisdiction drawn from law, when, 262.

 suit to establish custom or modus, in case of, 262.

owner of, when necessary party to lessee's suit, 209.

 to establish modus, 209; or right of way, 210.

owner not necessary party when it is not to be bound, 262.

persons entitled in remainder or reversion up to first estate of, necessary parties,

 227, 259, 264; unless question only between vendor and purchaser, 264.

subsequent remainder-men not necessary parties, 265.

 unless nature of estate doubtful, or first tenant in tail lunatic, 227 n., 265.

INJUNCTION AND RESTRAINING ORDER, 1613–1687.

abatement of suit, effect of, on interlocutory injunction, 64, 65, 1543, 1679.

 proceedings in case of, 64, 1543, 1679.

 on perpetual injunction, 1683.

accident, to restrain action on ground of, 1623.

account of debts and liabilities, after certificate of, after order for, 1616.

accounts and inquiries, preliminary, not issued after order for, 1617.

[The references are to the star paging]

INJUNCTION AND RESTRAINING ORDER — continued.

action at law, when granted to restrain, 1614—1625.

actor, to restrain violation of agreement by, 1654.

administration decree, to restrain creditor's action after, 1614—1618.

(See CREDITORS.)

administration, order in summons suit, after, 1616.

Admiralty, against proceedings in Court of, 1626.

agents, 1685 n. (a), 1687 n. (a).

agreements, against breach of, 1653 n., 1653—1657.

alienation of property, to restrain, 1651; *pendente lite*, 1652.

ex parte, usually granted, 1651, 1666.

amendment of bill, 418 n. (a); not a dissolution of, unless record altered, 423, 424, 1602, 1675.

notice of motion for, waived by, 424, 1602, 1675.

ancient lights, obstruction of, when restrained by, 1638; mandatory injunction, in case of, 1662 n.

effect of increase of, 1638 n.

appeal in injunction cases, staying proceedings pending, 1468, 1469.

application for, how made, 1666, 1667; delay, should be made without, 1640 n., 1663.

discovery in suit for, not till interrogatories filed, 1558, 1664.

ex parte, when made, 1664, 1665.

facts must be fully stated on application, 1664.

motion for decree turned into, 825, 1600, 1671.

stage of cause at which made, 1668.

art, works of, against publication of, 1647.

assessment, 1661.

assignment of lease, on breach of covenant to restrain, 1656 n.

Attorney-General, at instance of, to restrain public nuisance, 1636.

author, breach of covenant by, when restrained, 1654.

award under Arbitration Acts, proceedings not restrained by, 1621.

Bankruptcy, Court of, against proceedings in, 1626.

where in breach of an agreement, 1655.

banks of rivers, injury to, when restrained by, 1639.

breach of covenant to keep in repair, when restrained by, 1659.

bell, breach of covenant not to ring, when restrained, 1653.

bell-ringing, when restrained, 1635 n.

bill of exchange, to restrain negotiation of, 1651, 1665.

bill making case for, and prayer for, usually necessary, 888, 1618, 1619.

bond required to pay damages, before granting, where, 1666 n.

breach of, 1683—1687; what amounts to, 1683.

advice of counsel, 1686 n.

acquiescence in, effect of, 1683 n., 1686.

application for committal, how made, 1684 n., 1685.

evidence in support, 1686.

inspection, when ordered on, 1637, 1650.

notice of motion, form of, 1685; service of, 1685.

production of writ not necessary, 1686.

trial of question of fact, or issue, when directed on, 1078, 1686.

committal, order for, how drawn up and enforced, 1686.

when not ordered, 1686.

irregular, when, 1687.

ex parte order for committal, 1685; service thereof, 1685.

none until notice of writ or order, 1684.

sufficient notice, what is, 1684.

actual service not necessary, 1673, 1684.

remedy for, 1688.

against privileged persons, and corporations aggregate, 1687.

bricks, burning of, when restrained, 1685 n.

build, breach of covenant not to, when restrained, 1653 n., 1654.

buildings may be ordered to be pulled down, 1662 n.

burying place, 1632 n.

castle, to restrain pulling down, 1633.

cattle fair, 1685 n.

certainty in writ, as to matters restrained, 1673 n.

certificate of bill filed, when required on application, for, 1669.

Chancery, to restrain proceedings in, 1587 n., 1623 n.

circulars, 1643 n. (a).

circus, performances at, when restrained, 1685.

[The references are to the star paging.]

INJUNCTION AND RESTRAINING ORDER — *continued*.

- cloud on title, 1624 n.
- commission or continuance of wrongful acts, to restrain, 1619.
- common, abolished, 1614 n., 1625 n.
- common law courts, against proceedings in, 1623, 1624.
- common law, when issuable at, 1641 ; patent cases, in, 1642.
- confederacies, 1620 n. (a).
- contempt, to restrain action on irregular process of, 511, 1618.
 - proceeding for, upon breach of, 1069 n., 1683 and n.
 - must be clearly made out, 1686 n.
 - evidence, 1685 n., 1686 n.
 - costs, in trial of contempt, 1686 n.
 - fine, erroneous advice of counsel, 1686 n.
- copyright, when granted in cases, of, 1648–1649, 1681.
 - (See **COPYRIGHT**.)
- corporations may be restrained from breach of trust, 1661 n.
 - from misapplying or diverting funds or credit, 1661 n.
 - other acts in excess of corporate powers, 1650 and notes, 1661 n.
- county courts, when issued out of, 1619 n.
- courts, State and U. S., 1627 n.
- covenant, when granted to restrain breach of, 1653–1657.
 - principles on which granted, 1657.
- criminal or illegal acts, not granted to restrain, 1620, 1644 n.
- criminal matters, not granted to restrain proceedings in, 1620.
 - unless plaintiff thereby seeking redress, 1620.
- cultivation contrary to the custom of country, to restrain, 1655.
- damages in addition or substitution for, 1080, 1140, 1619 n.
 - assessment of, in cases of, 1080.
 - undertaking, as to, when required on application for, 1666.
 - (See **UNDERTAKING AS TO DAMAGES**.)
- date of, operation of, 1683.
- decree, when granted after, 388, 1614, 1615, 1618.
 - not granted before decree unless prayed for, 388, 1614.
- decree, to restrain action against person acting under, 1618.
- decree, to stay proceedings under, of the same or another Court of Chancery, 1567 n., 1623 n.
- defendant's application, on, 1618 n. 1734 n.
- definition of, 1613 ; different sorts of, 1613, 1614.
- delay, *laches*, &c., effect of, 1640 n., 1663 and n.
- demurrer, injunction not usually granted pending, 595, 596 and n., 1671.
 - advance of demurrer, 596 n., 1671.
 - demurrer for want of parties, after allowance of, 598, 1671.
 - discharge of, for irregularity, 1687.
 - misstatement, when obtained on a, 1678.
 - discovery, when granted in cases of, 1557, 1559.
 - interrogatories must be first filed, 1557, 1664.
 - discovery, bill of, may pray injunction, 547, 548.
 - dismissal of bill for non-prosecution, not prevented by injunction, 806.
 - dissenting chapel, to restrain officiating in, 1658.
 - dissenting minister, to restrain appointment of, 1653.
 - dissolution of, 1674–1679.
 - abatement, motion for dissolution or revivor on, 1543, 1544.
 - allowance of plea, after, 698.
 - answer or further order, when granted till, 1672 n., 1675, 1678.
 - application for, how, when, and by whom made, 287 n., 1675.
 - answer treated as affidavit on, and may be contradicted, 1676–1678.
 - costs of, if useless, 1679.
 - evidence on, 1676.
 - hearing of, right to begin on, 1678.
 - production of documents, pending, 1678.
 - damages, assessment of, where undertaking given, 1678.
 - demurrer, on allowance of, 1675.
 - discovery suit, when ordered in, 1678.
 - dismissal of bill on, 1675.
 - ex parte* injunction of, because facts not fully stated, 1664.
 - grounds for, 1678.
 - delay in prosecuting suit, 1675 n., 1685 n.
 - interpleader suits, service of notice in, 1567, 1678.
 - motion for dissolving, when may be made and heard, 1675 n.

[The references are to the star paging.]

INJUNCTION AND RESTRAINING ORDER — *continued.*

office copies of affidavits, because not in court when moved, 1669.
order, on application for, 1678.
plea, after allowance of, 698.

service of, notice of, 1675 ; in interpleader suits, 1568, 1676 ; trial of question
of fact, may be directed at, 1080.

practice on motions to dissolve, 1676 notes.

evidence in support of applications to dissolve, 1676 notes.

answer and its effects, 1676 notes.

denying plaintiff's equity, 1676 n.

affidavits, 1668 n., 1676 n.

Divorce, Court of, against proceedings in, 1626 n.

documents, court may restrain publication of any, tending to the destruction of
property, 1648 n.

as publication of notice that plaintiff was a partner in a bankrupt firm, 1648 n.
election, in cases, of, 815, 1618 ; in cases of public, 1650 n.

eminent domain, 1638 n. (a), 1650, n. (a).

equity in bill, or no injunction, 1613 n.

equity of redemption, sale of by mortgage, restrained, 1652 n.

evidence, on applications for, 1667, 1670.

affidavits, by whom made, 1667, 1668 and n.

in case of corporation, 1669 n.

copies of, when to be furnished, 899, 1670.

cross-examination on, how taken, 888, 1670.

form of, as to title, 1669.

opening of motion filed after, when admissible, 1598, 1670.

office copies must be in court, 1669.

sworn after bill filed, must be, 891, 1669 and n.

title of, 1671.

practice, as to the use of affidavits, for obtaining, continuing or dissolving,
1668 n.

as to the use and effect of answer, 1668 and n.

affidavits of title, positive, 1669 n.

answer, treated as affidavit, and may be contradicted, 1668.

cross-examination on, when permitted, 1670.

copyright, in cases of, 1644, 1670.

discovery, in suits for, 1672.

injury, must prove facts of, 1670.

interdicts, resemble, 1613 n.

interpleader suits, in, 1567, 1568, 1667.

legal rights, when for protection of, 1639.

oral, how taken, 890, 891, 1670.

patent cases, on *ex parte* application in, 1644, 1670.

title, to be shown by, 1669.

dramatic author, breach of covenant by, to restrain, 1654.

exceptions for insufficiency, setting down and argument of, in cases of, 767.

execution, to restrain, 1624.

executory devisee, at suit of, to restrain waste, 1630 ; executing against, 253.

ex parte, when granted, 1614 n., 1641 n., 1664 and n., 1665.

evidence on application, 1651.

renewal of application, on notice, when directed, 1666.

form of notice, 1665, 1666.

undertaking as to damages, on, 1666.

(See **UNDERTAKING, AS TO DAMAGES.**)

family mansion, to restrain pulling down, 1633.

farm houses, to restrain pulling down, 1633.

fete, holding of, when restrained, 1635 n.

foreclosure decree, when issued after, though not prayed, 1614.

foreign courts, against proceeding, in, 1626, 1627 n. (a) ; after decree in Chancery,
800, 1615.

forfeiture, to relieve against, 1657-1660.

(See **FORFEITURE.**)

distinction between, and penalty, 1657 n.

fraud, to restrain action on ground of, 1623.

graves, to restrain interfering with, 1632 n.

hearing, continuing or granting at the, 1679-1683.

previous injunction when granted at, without, 1681.

not on a mere *prima facie* case, 1681.

perpetual, when granted, though not prayed, 1682.

GENERAL INDEX.

[The references are to the star paging.]

INJUNCTION AND RESTRAINING ORDER — continued.

- illegal acts, not granted to restrain, 1621, 1644 n.
- indictment, or information at law, not issued against proceedings on, unless applicant plaintiff in equity, 1620.
- infant *en ventre sa mère*, at suit of, against waste, 67, 1630.
- inflammable materials, storing of when restrained, 1635 n.
- injury to property after decree, to prevent, 1614.
- interim order, now usually granted instead of *ex parte* injunction, 1686.
(See **INTERIM ORDER**.)
- interlocutory, 1668–1679.
 - application for, 1679.
 - awarded, against whom, 1673; in class suits, 1673.
 - costs of, application for, 1679.
 - damages, security for, when required on, 1666, 1672.
 - damages, sufficient relief, not granted in doubtful case, where, 1664.
 - decree, superseded by, unless expressly continued, 1679.
 - dismissed at hearing, bill may be, after interlocutory granted, 1679.
 - dissolution of, 1675–1679.
 - effect and object of, 1661, 1663.
 - evidence on application, 1689, 1687–1671.
 - motion to dismiss for want of prosecution, not barred by, 806.
 - order for, form of, 1671; declaration of rights in, 1672.
 - discovery, in suit for, 1672.
 - principles on which granted, 1639, 1661, 1663 and n.
 - specific performance, not granted when court would not decree, 1669.
- interpleader, in cases of, 1563, 1567, 1660, 1667.
- irregular, must be obeyed until discharged, 1683 and n., 1687.
- issue, when directed at hearing of application for, 1078, 1080, 1640, 1641.
- judgment, when granted after, 1624.
 - against, 1621 n. (a).
 - when before, and terms, 1624.
 - not issued to relieve against, on grounds available at law, 1621.
- judgment of another court, against alienation of property charged with, 1652.
- judgment debtor, against, 1041.
- laches, delay, &c., effect, 1640 n., 1663 and n.
- landlord and tenant, 1660.
 - lapse, against bishop taking advantage of, 1652.
 - law, mode of application for, to stay proceedings at, 2126 n.
 - lease, to restrain breach of covenants in, 1655; forfeiture of, 1660.
 - lectures, 1647 n. (a).
 - legal rights, when granted for protection of, 1639.
 - when to be established, before granting, 1629 n., 1639 n.
 - legal title, to restrain setting up of, 1660.
 - not granted against purchaser for value without notice, 1660.
 - perpetual at hearing, made, 1679, 1680.
 - legislature, not granted to restrain applications to, 1620.
 - letters, against publication of, 1647.
 - libel, 1620 n. (a), 1643 n. (a), 1644 n.
 - life tenant, to restrain waste by, 1629; when waste equitable, 1683.
 - lights, 1661 n. (c).
 - litigation, for protection of property pending, 304.
 - repeated, of the same matter to restrain, 1661.
 - mandamus, not issued against proceedings by, unless applicant plaintiff in equity, 1620.
 - mandatory, only granted at hearing, 1661, 1662 n., 1681.
 - as to mandatory injunction, 1613 n., 1661 n., 1662 n., 2323 n.
 - after decree, 1618 n.
 - to restrain continuance of wall, obstructing lights, 1662 n.
 - object often effected by restrictive order, 1662.
 - manuscript treatises, against publication of, 1647.
 - map, piracy of, to restrain, 1645.
 - marriage of ward of court, to restrain, 1660.
 - member of board of trade to restore, 1638 n.
 - misjoinder, may be granted in spite of, 304.
 - mill privilege, obstruction of, 1639 n.
 - minister of dissenting chapel, against appointment of, 1653.
 - mistake in fact, to restrain action on ground of, 1628.
 - mistake in law, not issued to relieve against, 1622.
 - mortgagee, against, to prevent selling equity of redemption, 1652 n.

[The references are to the star paging.]

INJUNCTION AND RESTRAINING ORDER—continued.

mortgagor, against, to restrain waste, 1630; to restrain sale, 1665.
 motion, application for, made by, 1668.
 motion for decree, when turned into, 825, 1600, 1671.
 multiplicity of suits, to restrain, 1682.
 municipal ordinances, 1620, 1650.
 name, partnership, 552 n., 1655 n.
 of place, 1648 n.
 negative covenants, 1654 n. (a).
 notice of, effect, 1665 n. (a), 1684 n. (a).
 notice of motion for, 1594, 1665, 1667.
 in United States courts, 1614 n., 1664 n.
 amendment of bill, a waiver of, 425, 1602, 1671.
 appearance, usually necessary after, 1667.
 form of, 1594, 1665, 1667.
 motion for decree, when turned into, 825, 1599, 1671.
 service of, 1595, 1667.
 special leave, when required for, 1598, 1667.
 not granted till bill filed, 1667.
 trial of question of fact may be directed on, 1078, 1079, 1640, 1641.

noisy trade, continuance of, when restrained, 1635 n.
 nuisances, against, 1635–1640, 1662 n.

(See **NUISANCE.**)

oath, 1614 n. (a).
 object of, to prevent rather than to redress wrong, 1618 n.
 to preserve all things as they are, 1639 n.
 obstruction of right of way, to restrain, 1639 n.
 outstanding terms, to restrain setting up of, 1681.
 parliamentary powers, to restrain excessive exercise of, 1650.
 partnership, in cases of, 1655 n., 1660.
 party wall, destruction of, 1639 n.
 past acts, 1661 n. (c).
 patents, in cases of, 1642; perpetual, made, at hearing, 1681.
 payment of dividends, against, 1652.
 payment of salary, 1652.
 payment into court, when granted on, terms of, 1672, 1770.
 peace, bills of, perpetual, granted on, 1682.
 penalty, to relieve against, 1657–1660.

(See **PENALTY.**)

perpetual, when granted, 1680, 1681.
 abatement, not affected by, 1683.
 case must not be doubtful, 1681.
 definition of, 1613.
 hearing, only made at, except by consent, 1682, 1683.
 prayer for, 388, 1614; when granted without, 1614.
 personal representative, against receipt of assets by, 1665.
 ex parte, granted, 1664.
 personal representative, when not issued for protection of, 1616.
 piracy, what constitutes, in reference to copyright, 1646 n.
 plea, not usually granted pending, 691, 1671.
 advance of plea, 691, 1671.
 pollution of streams, 1638.
 prayer for, usually necessary, 356, 388, 1614, 1618.
 relief, now part of, 356.
 presentation to a benefice, to restrain, 1652.
 probate, to restrain proceedings in Court of, 552, 1625.
 proceedings for same matter, to restrain, after decree, 817, 1618.
 prohibition, not issued against proceedings by, unless applicant plaintiff in equity, 1620.
 provisional, definition of, 1613, 1614; continued, when, 1679, 1680.
 production of documents, to restrain publication or improper use of information obtained by, 1837.
 publication of judgment in breach of agreement, to restrain, 1655.
 of document, tending to destroy property, as notice stating that one was a partner in a bankrupt firm, 1648 n.
 public bodies, against, to restrain excessive or *ultra vires* acts, 1650.
 public duties, 1620 n. (a).
 public office, to restrain exercise of duties of, 1650 n.
 purprestures, to restrain, 1636.

[The references are to the star paging.]

INJUNCTION AND RESTRAINING ORDER — *continued.*

- quia timet*, to restrain execution sale, 1624 n.
- railroad, use of dangerous locomotives by, 1650 n.
- railroad company, to restrain violation of covenant by, 1654.
generally, 1731 n.
- receiver, to restrain proceedings against, 1058.
to restrain disturbance of possession of, 1743.
when bound by, 1058 n.
- rebuild or repair, covenant to specific performance, 1659, 1660 n.
- regatta, 1635 n.
- reinstated, when, 1675 n.
- remedial, 1618 n.
- repair, injunction not precluded by covenant to leave premises in, 1658.
- rifle range, to restrain injurious use of, 1639.
- right of way, use of, when restrained, 1639 n.
- riparian rights, 1638, 1639.
- road, used for public travel, closing of, 1640 n.
- scandal in bill, not granted in case of, 354, 1671.
- secrets, against disclosure of, 1650 and notes
- separation deed, to prevent violation of covenants of, 558.
- service of, how effected, 1674; substituted service, 447, 1674.
corporation aggregate, on, 1674 n.
minutes of order for, of, when sufficient, 1678.
- sequestrators, to restrain proceedings against, 1058.
- sewers, opening or leaving open, 1685 n.
- ships, in cases of, 1653.
to restrain unauthorized employment of, 1658.
to restrain sailing of, 1658.
to restrain transfer of interest in, 1658.
- smoke, obstruction of passage of, when restrained, 1635 n., 1662 n.
- smoke and noxious vapors, emission of, when restrained, 1635 n.
- specific chattels, to restrain sale of, 1652.
- specific effect of, in staying proceedings, 1674.
- specific performance suits, in, 1656, 1665; to restrain alienation, 1652; of continuous acts, 1663.
- State may have, 1618.
- streams, to restrain diversion of, 1639; pollution of, 1688.
- strikes, 1620 n. (a).
- subpoena to issue with injunction, where, 1667 n.
- suits abroad, 1618 n. (a).
- taxation, 1661 n.
- tenancy in common, in case of, 1690.
- tenant for life or years, to restrain waste by, 1629.
- tenant in tail upon possibility of issue extinct, to restrain waste by, 1634.
- tenants of land, to restrain, breach of covenants by, 1655, 1656.
- threats of injury, 1648 n. (a), 1670 and n.
- timber, to restrain removal of felled, 1653.
- timber, to restrain felling of, in cases of waste, 1630; where waste equitable, 1633.
- title of book or periodical, to restrain piracy of, 1648.
- towns, to restrain from improperly raising or expending money, 1661 n.
- trade, to restrain breach of covenant not to, 1654.
- trade marks, in cases of, 1648, 1649 and n.
made perpetual at hearing, 1681.
(See TRADE MARKS.)
- transfer of negotiable security, to restrain, 1651 and n., 1665.
ex parte, usually granted, 1651, 1664.
forged indorsement, in case of, 1651.
- transfer of stock, to restrain, 1652.
- transfer of wife's property by husband, to restrain, 1652.
- trespass, in cases of, 1631.
- trial of question of fact, in suit for, 1078; stage of suit at which trial directed, 1078, 1079, 1080.
- trust, breach of by corporations, and their officers, 1661 n.
- trust property, to restrain sale of, 1652.
- trusts, decree for performance of, perpetual injunction after, 1682.
- ultra vires*, to restrain acts of corporation, which are, 1650.
use of locomotives on railroad, dangerous to buildings along the line, 1650 n.

[The references are to the star paging.]

INJUNCTION AND RESTRAINING ORDER — *continued.*

under lessee, against, to restrain waste, 1630.

United States' courts, 1627 n.

wards of court, to restrain marriage or removal of, 1854, 1855, 1860.

(See **WARD OF COURT.**)

waste, against, 5, 8, 67, 1628–1631, 1638 n. (a), 1678, 1681; where equitable, 1632–1634.

account incidental to injunction, in cases of, 1684.

application for, by whom made, 1629, 1630; against whom, 1630, 1634.

equitable titles, in cases of, 1630.

form of order for, 1673.

infant *en ventre sa mère*, at suit of, 67, 1630.

perpetual, made, at hearing, 1681.

(See **WASTE.**)

watercourse, 1638, 1639.

way, right of, 1689 n.

well, to restrain pollution of, 1638 n.

will, after absolute decree to establish, perpetual injunction granted against heir, 1682.

windows, darkening, in demised tenement, 1654 n.

writ of, preparation and issue of, 1674; docket for, 1674.

second not usually issued on making perpetual, 1683.

certainty of statement in writ of matters restrained, 1678 n.

where returnable, in Maine, 2150 n.

written bill, in cases of, 396, 442, 1619.

INN OF COURT,

plea of the jurisdiction of the Benches of, 628.

INQUIRY,

appeal from order directing, after it has been made, 1477.

before Master, general course of proceeding at, in case of, 1202–1208.

(See **MASTER'S OFFICE.**)

class, as to, when directed, 217, 991, 1203 *et seq.*; practice thereon, 217.

competency of defendant, as to, when directed, 177.

creditor's claim, as to, on application to restrain his action, 1617.

debts, as to, when directed, 1203.

defective evidence, when directed, in case of, 327, 853 n., 858, 859.

dismissal of bill, after decree, for, 793, 811; dower, in suit to assign, 1165.

election in cases of, 817.

facts, not pleaded, as to, when directed, 327.

fitness of next friend of infant, as to, 70.

further consideration, when directed at hearing on, 1368.

ground must be laid for in pleadings, 327.

heir, for, when directed, 1203; in charity suits, 261.

infant's suit, beneficial whether, 70, 80.

infant's suits, which is most beneficial, 69, 70, 684.

interest, as to, in case of sequestrators, 1057, 1058.

law, when directed, as to matter of, 1203.

legacies and annuities, as to proceedings on, 1214.

maintenance of infant, as to, 1360.

management of property, into, when not directed under prayer for general relief, 878, 379.

new next friend, as to the propriety of appointing, 76.

next of kin, as to, when directed, 990, 1203.

need not be preliminary to taking accounts, 991.

numbering of in decree or order, 1005.

outstanding personality, as to, 1005.

parties, as to, in partition suits, 1151, 1153.

persons interested, as to, 989, 1203, 1429.

poverty, as to, on defendant brought to the bar for not answering, 500, 501.

prima facie title made by plaintiff, when directed in case of, 991.

sale at instance of judgment creditor, in case of, 1037, 1038.

title, into, 806, 987, 989, 1215–1221, 1339–1341.

(See **TITLE.**)

truth of plea of former decrees, into, 661, 692.

truth of plea of pendency of another suit for same matter, 637, 638, 692, 697.

INQUIRY (WRIT OF),

assessment of damages by, 1140–1142.

execution of, 1141.

filng writ and return, 1141.

[The references are to the star paging.]

INQUIRY (WRIT OF) — continued.

form of, 1140.
indorsement on, 1140.
inquisition on, how set aside, 1141, 1142.
notice of, 1141.
preparation and issue of, 1140.
return of, 1140, 1141.
teste of, 1140.

INROLMENT. (See ENROLEMENT.)

INROLEMENTS (CLERK OF),
answer taken by, when, 704.

INSANITY,

charge of, particular acts of madness may be proved under, 853.
husband of executrix, of, receiver appointed, in case of, 1722.
onus probandi in cases of, 851, 852.
plea of, 630 n.
presumption, in cases of, 851; lucid interval, where allegation of, 852.
(See LUNATIC.)

INSOLVENT,

creditor of, suit by, against executor of assignee, when permitted, 160.
executor of, receiver appointed in case of, 1722.
limitations, statutes of, effect of, in case of, 642.
ne exeat, against, discharge of, 1714.
plea that plaintiff is, 62.

(See PLEA.)

redemption suit by, when allowed, 60.
situation of, as to after-acquired property, 62.
surplus, could not sue assignee for, 61.
principal or surety, not necessary party to suit for contribution, 270.
but plaintiff may elect to make him a party, 271.

(See ASSIGNEES IN BANKRUPTCY. BANKRUPT. BANKRUPTCY.)

INSPECTION,

breach of injunction, on motion to commit for, 1685.
documents of, 1817-1839.

(See PRODUCTION OF DOCUMENTS.)

lunatic's documents, 83 n.
nuisance in cases of, 1687 n.
patent cases in, 1642 n.; obtainable at common law, 1642.
photograph, copies by, 1817 n. (a).

INSTITUTION,

one of several proprietors or subscribers to, may sue on behalf of himself and others, when, 239, 241; not if dissolution sought, 243.

INSTRUCTIONS,

bills for, 1561 n. (a), 1604 n. (a).
parties, 243 n. (a).

INSTRUMENT,

admission of, statement and interrogatory, in order to prove, 364.
cancelled, bill for re-execution of, need not be accompanied by affidavit, 393.
claim under, statement of plaintiff's title, in case of, 821.
discovery of, when affidavit to accompany bill, 392.
execution of, proof of, by attesting witness, when not necessary, 880.
informal, should generally be set out in *hæc verba*, 363.
interrogatory, as to, form of, 364.
loss or suppression of, concurrent jurisdiction, in cases of, 552.
lost, bills to obtain benefit of, must be accompanied by affidavit, 392, 393.
secus, if suit merely for discovery or delivery, 393.
ne exeat, in cases of, 1700.
plea to, 628.

onus probandi, lies on party disputing, 850.
reference to, how made in bill, 367; effect of, 367.
set aside for fraud, production in suit to, 1830.
statement of, in bill, 364, 365.
statutory, how stated, 366.
written, need not be stated to be, if not required at law, 364, 365, 367.

INSUFFICIENCY OF ANSWER (TO INTERROGATORIES FOR EXAMINATION OF DEFENDANT),

amendment of bill, a waiver of, 413, 762; unless merely formal, 762.

[The references are to the star paging.]

INSUFFICIENCY OF ANSWER, ETC.—continued.

exceptions for, 758–774.

(See EXCEPTIONS FOR INSUFFICIENCY.)

motion on admission in answer, not a waiver of, 762.

motion for decree, service of notice of, a waiver of, 766, 820, 1821.

replication, a waiver of, 768.

INSUFFICIENCY OF ANSWER (TO INTERROGATORIES FOR EXAMINATION OF PLAINTIFF),

exceptions for, 1555.

INSURANCE,

forfeiture for non-insurance, when and how relieved against, 1659.

INTERESSE SUO (EXAMINATION PRO),

receiver, in case of, 1744.

sequestration, when granted in case of, 1058–1059.

discharge of sequestration, after, 1059.

dispensed with, when, 1058.

infant, granted at instance of, 1059.

obtained, how and by whom, 1058.

pauper, granted at instance of, 39, 1059.

INTEREST,

co-plaintiffs, of, need not all be equal, 345.

defendant's, bill must show, 321.

exception, if member or officer of corporation, 144, 296, 322, 378.

demurrer for want of, in defendant, 321, 322, 557; in plaintiff, 314, 556.

denial by answer of plaintiff's or defendant's does not relieve defendant from obligation to answer fully, 720, 721.

disclaimer, for want of, 632, 706.

distinct, bill against several persons having, when not multifarious, 336, 337, 341.

persons having none, or several and distinct, should not be co-plaintiffs, 301; objection, how taken formerly, 301–303.

plaintiffs', in information and bill, 11.

plaintiff's, must be shown, 314–316; must be subsisting, 316.

inquiry as to, 991.

minuteness or remoteness of, immaterial, if indefeasible, 317.

plea for want of, in defendant, 631.

production of documents, what sufficient to entitle party to, 1828–1832.

relator in charity case, need not have any, 13.

want of, in defendant, how taken advantage of by him, 299.

INTEREST (OF MONEY),

annuities, computation of, on, 1254; on arrears of, 1255.

balance, on, not decreed under prayer for general relief, 382.

stated account of, when allowed, 1257, 1258.

bond, on, 1254; if security for annuity, 1254.

computation of, directed at further consideration, 1368, 1369.

though not prayed, 382, 1368, 1369.

costs, on, when given, 1880, 1381.

charge of debts of another person, in case of, 1258.

compound interest, when, and on what principle, allowed, 1259 and notes, 1260.

not illegal, 1259 n.

for money improperly applied, 1259 n.

in case of mortgages, 1251 notes, 1259 n.

(See MORTGAGEE AND MORTGAGOR.)

debts not carrying interest on, 1253, 1256.

on what demands allowed, 1258 and n.

as to the effect of custom and usage on, 1258 n.

debts proved under decree, on, computation of, 1253–1260.

decrees in equity, 1255 and n.

dower, not allowed on arrears of, 1166.

exchange, on bills of, 1257.

incumbrancer consenting to sale, in case of, 1265.

incumbrances, on, how kept down by receiver, 1751.

judgment, on, 1042, 1255 and notes.

rate of, on, 1255 n.

land, money charged on, statute of limitations, when applicable to suit for, 653;

where prior mortgagee in possession, 653.

legacies, on, computation of, 1258.

legacy, on, statute of limitations, when applicable to, 652, 653.

[The references are to the star paging.]

INTEREST (OF MONEY) — continued.

- master's finding, upon, 1253 n. (a).
- penalty, beyond, of a bond, 1254 and n.
- practice of the parties as to, 1256 n.
- prayer for general relief, decree for, under, 388 n.
- promissory notes, on, 1257.
- purchase-money on, in sales by court, 1276, 1277.
- rate of, 1258, 1255 and n.
- receiver, when charged with, 1755.
- rests, how computed with, 1247, 1251 and notes, 1256 n., 1259 and n.
 (See Rests.)
- specialty debt, on, 1254; on balance of, 1257.
- stated account, on, 1257 and n., 1258.
- subsequent, how computed, 1259.
- trust for payment of debts, in case of, 1258.
- trustees, executors, agents, &c., charged with, when, 1369.
 rests and compound interest, when, 1369 n.
 in cases of gross delinquency, 1369 n.
 on trust money, employed in trade, 1369 n.
 arrears of interest ordered to be paid annually for maintenance, 1369 n.
- Master usually calculates, to date of report, 1224 n., 1248, 1258.
- mode of computing when partial payment made, 1060 n.
 by dividend in bankruptcy, 1260.
- writ, claim of, in, 383 n.

INTERIM ORDER,

- ex parte* injunction, issued instead of, 1666; form of, 1666.
- service of, how effected, 1674.
- undertaking as to damages, on, 1666.

(See **UNDERTAKING AS TO DAMAGES.**)

INTERLOCUTORY APPLICATIONS, 1587-1591.

- affidavits on, costs of, 1440 n.; notice of intention to use, when necessary, 899;
 search for, 899; time for filing, 899.
- branch of court, made to what, 1588.
- costs of, may be awarded though made to wrong judge, 1589.
 costs in the cause, when, 1378.
 reservation of, form of, 1379.
- cross-examination, on time for giving notice to produce witness for, 914.
 enlargement of time, how obtained, 914.
- definition of, 1587.
- deposition on, filing of, before close of examination, 911.
- evidence upon, mode of taking, 888.
- motion, by, 1586, 1591-1608.

(See **MOTIONS.**)

- motion to dismiss for want of prosecution, not barred by, 806.
- order on, 1589.

appeals from, 1472, 1473; to House of Lords, 1491.

conduct of, 1169.

different sorts of, 1590.

enforced, how, 1591.

motion to dismiss bill for non-prosecution, not prevented by, 806.

nullity, should not be treated as, though made by wrong judge, 1589.

special, definition of, 1589.

perpetual injunction, not granted on, 1682.

petition by, 1587, 1588, 1608-1612.

(See **PETITIONS.**)

INTERMEDIATE ESTATES,

contingent, and taker unascertained, necessary parties in case of, 229.

when taker comes into *esse* pending suit, 229.

persons entitled to, prior to first vested estate of inheritance, necessary parties,
 228, 264, 286.

persons entitled to, when necessary parties to redemption suit, 259.

INTERPLEADER, 1560-1572.

requisite to sustaining, as to subject, interest, and claim, 1560 and n., 1564 n.

claim of plaintiff, 1560 n.

claim by defendants, but not suit, necessary, 1564 n.

plaintiff can claim no relief against either of the defendants, 1560 n.

must stand indifferent between them, 1560 n.

to protect plaintiff from unjust litigation by a single suit, 1560 n.

[The references are to the star paging.]

INTERPLEADER — continued.

only where the right of property is to be litigated, 1560 n.
abatement of suit for, when none, on death of plaintiff, 1571.
affidavit of no collusion, bill must be accompanied by, 394, 1561-1564.
 all plaintiffs should join in, 1562.
 contradicted, cannot be, 1563.
 demurrer for want of, 1562 n.
 dispensed with, when, 1563.
 filing of, 1562.
 may be sworn before, 1562.
 form of, when plaintiff public officer, 1562, 2008 n.
 plaintiff's solicitor, by, when accepted, 394 n., 1563.
 service of copy of, 1563.
agent, by, 1565.
answer read against co-defendant in suit for, 843, 1568 n.
attorney, 1561 n. (a).
auctioneer, 1565 n.
Bank of England, by, 147.
bill of, 1560, 1561, 1564.
 form of, 1561; averments of, 1564; prayer of, 1561.
 interest, plaintiff must not claim, in, 1560 n.
 pro confesso, may be taken, 151, 1568 n.
 plaintiff in bill should negative interest in himself, 1561 and notes.
 must not aid either party, 1561 n.
 show himself mere stakeholder, 1561, 1565, 1566.
 that he cannot pay over to either without risk, 1561.
 that the defendants are capable of interpleading, 1561.
 admit title as against himself in each of the claimants, 1561.
 after interpleader cannot set up interest in himself, 1561 n.
 offer to bring fund into court, 1563 and notes.
 omission of offer not ground of demurrer, 1563.
 fund must be brought into court before any order, 1563 and n.
 offer where land subject of controversy, 1563 n.
 need not set out defendant's claims, only their nature, 1564 n.
collusion, in a case where charged, courts put plaintiff under an undertaking as to
 damage, 1563 n.
corporation, by, when title to its stock is disputed, 147.
cross-bill in, 1561 n. (a).
costs, in cases of, 1407, 1564 n. (a), 1569 and n., 1570 and n.
 (See Costs.)
as between co-defendants, 1570.
Crown, against, 1567.
decree, in cases of, 1568 and notes, 1569.
 what decree plaintiff entitled to, 1568 n.
demur, both defendants may, if it appears one entitled and the other not, 1562.
 objection to want on form of affidavit taken by demurrer, 1562 and n.
disputed titles, in cases of, 1564.
evidence, in cases of, 1568.
executors and trustees by bill in nature of, seeking instructions of court, 1560 n.,
 1567 n., 1572 and n.
husband and wife, against, 1561 n. (a).
injunction, in cases of, 1563, 1567, 1623 n., 1660, 1667.
 application for, how made, and evidence, 1567, 1667.
 order for injunction made conditioned on plaintiff's paying fund into court,
 1563 n.
 form of, 1567.
 notice to dissolve, service of, 1568, 1675.
insurance company against landlord and tenant, 1565 n.
jurisdiction of Court of Chancery, in cases of, 1560, 1565-1567.
 not abrogated by statutory legal jurisdiction, 1571.
jurisdiction, defendants out of, against, 150, 1567.
parties, tenant, against landlord and stranger, or other claimants, 1564, 1565 and n.
 insurance company against landlord and tenant, 1565 n.
 auctioneer, 1565 n.
 person taxed in two different towns, 1565 n.
 underwriters, different creditors of insolvent debtor, 1565 n.
 master of vessel, where different claimants under bill of lading, 1565 n.
 banks, respecting deposits, or claims for stock, 1565 n.
 receiver, attorney, agent, &c., 1565 n.

GENERAL INDEX.

[The references are to the star paging.]

INTERPLEADER — *continued.*

- vendee of personal property, 1571.
- payment into court, in cases of, 1562.
- practice, 1568 n., 1569 n.
- real estate subject of controversy, 1563 and n., 1565 n.
- security for costs, from defendant out of the jurisdiction, 27, 1571.
- sheriff, by, 1566 and n.
- stakeholder, by, 1565.
- suit against one party claiming price of goods and another for value in trover, 1566 n.
- supplemental bill, parties to, after decree for, 1571.
- tenant against landlord and a stranger, 1565 n.
- what necessary to justify interpleader by tenant, 1566 n.
- titles, disputed, in case of, 1564.
- wrongdoer, as to either of the defendants, cannot maintain, 1566.

INTERPRETERS,

- usually who are, 2175 n.
- forms of proceeding by, 2175 n.
- costs of, 1440 n.
- professional confidence, rule as to, extends to, 576.

INTERROGATING PART,

- of bill, 355, 1884 notes; now abolished in England, 356, 490; in use in United States, 374 and n., 376 n., 377, 1884 and notes.
- general interrogatory, 374 n., 377 n., 408 n.

INTERROGATORIES (FOR EXAMINATION OF DEFENDANT), 480 - 487.

- amended, service of, 486.
- amended bill, to, confined to amendments as to original defendants, 485; *secus*, as to new defendants, 486.
- amendment of, 409 n., 486, 487.

(See AMENDMENT OF INTERROGATORIES.)

- answer, when defendant may decline to, 583, 722; when he may not, 715 n., 722.
- answer to, may extend to any, 715, 716.

but it is impertinent if mere statement of ignorance, 716.

answer must extend to all which defendant required to answer, 716.

 though not founded on statement in bill, 715.

Attorney-General, when filed for examination of, 140.

copies for service, 482, 487.

(See Service.)

costs of, when allowed, though not filed, 487.

discovery, bill of, to, must be filed before injunction granted, 1416, 1596.

documents, as to, 484, 485.

echo of bill, formerly, 484; now more minute, 484.

filings of, 482; although demurrer pending, 480.

 may be simultaneous with bill, 480 n.

form of, 376, 482; as to deed, 364.

incumbrances, as to, in foreclosure suit, 277 n.

indorsement on copy for service of, 482.

infants, to, 717 n. (a).

nature of, 433-485.

 must be founded on bill, 483; confined to case made by it, 483.

 but if answered, matter is put in issue, 485.

neglect to file, effect of, where a cross-cause, 1561.

paper on which written, 482.

particular, must be answered, although plaintiff's case denied, 726.

petition of right to, 131.

pro confesso, filing of, necessary to take bill, 451, 520.

service of, when dispensed with, in case of, 521, 522.

second set, filed, when, 485.

several, may be founded on one allegation of bill, 483.

service of, 478, 480, 481, 520, 521.

(See Service.)

signature of counsel to, 482 n.

specific documents, as to, 760 n.

time for service of, 480, 481.

(See Service.)

time for filing, 480; extension of, application for, how made, 481.

 costs of application, 480.

 order for extension of, production of, 481.

[The references are to the star paging.]

INTERROGATORIES (FOR EXAMINATION OF DEFENDANT) — continued.
traverse of, when necessary, 725; must be direct, 725, 726.
written, how, 482.

INTERROGATORIES (FOR EXAMINATION OF DEFENDANT AFTER THIRD INSUFFICIENT ANSWER), 771.
how prepared and settled, and allowed, 772
examination on, how taken, 772.

(See EXAMINATION OF DEFENDANT.)

INTERROGATORIES (FOR EXAMINATION OF PLAINTIFF), 758, 840, 1554 and n., 1555.

answer to, read as admission, 780, 1413; printing, 700.
discovery as to documents, in order to procure, 1824 n.
filing of, 1554; leave for, when necessary, 1555; time for, 1555.
form, preparation, and proceedings on, 1554.
in New Jersey and Massachusetts, 1554 n.
one bound to answer must answer fully, 580 n.
any questions tending to destroy the plaintiff's claim, 580 n.
right to dismiss, for want of prosecution, not interfered with on filing of, 808 n., 1454.

INTERROGATORIES (FOR EXAMINATION OF WITNESSES), allowance of, 1195.

preparation and settlement of, before Master, 1195.
formerly the general mode of examining witnesses in equity, 920.
practice now almost entirely abolished in England, 920.
nature of, 920; original, 920; cross, 920.
must be pertinent and not leading, 920.
what are leading questions, and when may be put, 920 n., 921.
rules with regard to leading, 921.
consequence of putting leading, 920.
objections to leading, when to be made, 890 n.
what objections should specify, 920 n.
objection of leading does not apply to cross interrogatories, 922.
must relate to some material point, 921.
cross interrogatories as to new facts, 922.
may be referred for scandal, but not for impertinence, 922.
how entitled, 922.
first, as to knowledge of parties, 923.
division and conclusion of, 923.
last interrogatory, 923; form of, 924.
rule of United States courts, as to, 924 n.
fatal defect, if this is not answered, 924 n.
general interrogatory need not be used, but if used must be in form prescribed, 924.

drawn and signed by counsel, 924.
filed with examiner, 924.
selection of, 924.
suit, cause of, necessary, 920 n.
additional, allowed before examiner, 924.
whether new may be exhibited before commission, 925.
order for, obtained, 925.
new, may be exhibited before examiner notwithstanding commission, 925.
cross interrogatories, 925, 926.

INTESTATE PERSON,

limitations, statute of, when applicable to estate of, 649, 652 n.
plea that alleged, is living, 680.

INTRUDER,

estate of infant, on, jurisdiction of court over, 1302.

INTRUSION.

information of, may be filed in Chancery, 6.

INVALID,

answer of, how taken, 745; fees on taking, 745 notes.

INVESTMENT OF FUND IN COURT,

conversion of consols into other securities, when permitted or refused, 1791; application for order, how made, 1791.

mode of effecting, 1790, 1792.

order for, usually necessary, 1789.

exceptions, 1789; fund paid in under Legacy Duty Act, 1790.

[The references are to the star paging.]

INVESTMENT OF FUND IN COURT — continued.

or Trustee Relief Act, 1790.
how obtained, 1789.
purchase-money, 1278.
securities in which it may be made, 1790.

INVESTMENT IN PURCHASE OR ON MORTGAGE OF LAND, 1339-1342.

approval of proposed, how obtained, 1340; evidence, 1340.
conditional contract for, 1339.
execution of deed, chief's certificate of, 1314.
payment of purchase, or mortgage money, 1342.
title, holding, when sanctioned, 1341
title, inquiry into, on, 1340; certificate of, 1341.
conveyancing counsel, reference to, 1340.
prosecution of, 1340.
preparation and approval of conveyance or mortgage deed, 1341.
searches, affidavit of, 1341.

IRELAND,

answer, how taken in, 744.
Chancery, decree or order of court of, how enforced in England, 1068.
plea of, 664.
decree of English Court of Chancery, how enforced in, 1067.
documents admissible in, without proof, admissible in England, 864.
injunction to restrain proceedings in Court of, 1626.
ne exeat, against person domiciled in, 1703.
receiver of property in, when appointed, 1731.
receiver, resident in, security, how taken from, 1736 n.
security for costs required from plaintiff or applicant resident in, 28.
statutes of, before the Union, how proved, 862, 1863.
witness in, attendance of, how compelled, 918.

IRREGULARITY,

affidavit of service, in order taken on, discharged for, 1597.
process grounded on, vitiated by, 898.
amended bill, when taken off file for, 425.
amendment of bill, in order for, 411, 421, 597, 601.
amendments and exceptions together, order to answer, when discharged for, 414, 770, 776.

[The references are to the star paging.]

IRREGULARITY — continued.

- guardian *ad litem* of person of unsound mind, discharge of order appointing, for, 177.
- injunction or restraining order, discharge of for, 1687.
- jurat, in, effect of, 748, 898.
- ne exeat*, discharge of, for, 1712.
- new trial of issue on ground of, 1124.
- order, discharge of, for, should be obtained at once, 1001, 1657.
- pauper, discharge for, of order for admission as, to defend, 156; to sue, 41.
- petition of appeal, taking off the file for, 1478, 1480.
- petition, discharge of order made on, for, 1611.
- plea, taken without oath, taken off the file for, 688.
- review, in bill of, remedy for, 1578, 1579.
- sale not invalidated by, unless in substance, 168.
- sequestration, in, 1050.
- service of bill, out of jurisdiction, of order for, 453.
- stop order, discharge of, for, 1697.
- subpoena* to hear judgment, in, 989.
- supplemental bill in, remedy for, 1535, 1537.
- trial of question of fact, in, new trial on ground of, 1124.
- waiver, principle of, application to, 513.

(See **WAIVER**.)

ISSUE,

- appeal from order for, allowed after proceeding to trial, 1082, 1120.
- applications as to, made in Chancery, 1110 n., 1111 n., 1112.
 - motion, proper form of application for, 1110 n.
 - court may direct on its own motion, 1078 n., 1110 n.
- arbitration, cannot be referred to, by judge, 1115.
- assizes or *Nisi Prius*, trial of, at, when directed, 1071, 1110.
- Bar, trial of, at, when directed, 1112; new trial of, 1112.
- compromise of, effect of, 1148.
- damages, assessment of, 1080-1082.
 - instead of specific performance, 1080 n., 1081.
 - instead of mandatory injunction, 1080 n.
 - ancient lights, 1080 n.
 - patent cases, 1071 n., 1080 n., 1081 n.
- directed, when, 1071-1082.

(See **FACT, QUESTION OF**.)

- dismissal of bill, on plaintiff's application, after order for, 793.
- form of order for, 1111.
- form of, not changed on application for new trial, 1139.
- further hearing after trial of, 1146-1149.

(See **FURTHER HEARING**.)

- new trial of, 1120.
- number or issues 1111 and n.
- patent cases, in, form of, 1642 n.
- pauper, admission of party as, for purpose of trial, 43.
- pro confesso*, when ordered to be taken, 1114.
 - costs, in case of, 1115.
 - further hearing after, 1115.
- trial of, 1110-1120.
 - admissions on, 1112 and n.
 - attendance of person not a party at, 1119.
 - attorney, effect of defendant's neglect to name, 1114.
 - certificate of judge on *postea*, 1119.
 - costs of, 1137, 1138, 1148, 1149, 1383, 1407.

(See **COSTS**.)

- default at by plaintiff, effect of, 1114; costs occasioned by, 1115.
- depositions, when read upon, 1117.

admissibility of, determined by judge, 1110 n., 1117.

if chancellor directs depositions or other evidence to be used at trial, judge must admit, 1115 n., 1117 n.

subject to order of court, in certain cases, 1115 n.

admission, order for, how obtained, 1118.

answer, read by order, 1116 n., 1117 n.

effect of answer on the trial, 1115 n., and 1116 in n.

de bene esse, taken, admission of, 851, 1118.

death of witness after, 1118.

discovery bill in aid of requires leave of court, 1113, 1557.

[The references are to the star paging.]

ISSUE — continued.

- dismissal of bill by plaintiff, not permitted after, 793, 1120.
- evidence on, 1112, 1118, 1115 and n., 1117 n., 1118 n.
- examination of witness upon, 1115.
- exceptions, bill of, does not lie for misdirection at, 1119 and n.
- place of, 1112.
- plaintiff, who should be, 1111; terms imposed on, 1111.
- postponement of, 1114.
- proceedings upon, 1115.
- production of documents on, 1118; order for necessary, 1118.
- by person not a party, but attending, 1119.
- proviso, record carried down by, 1114.
- special circumstances, indorsement of, on *postea*, 1119.
- special jury, by, direction for, how obtained, 1114.
- time for, 1114 and n., 2334 n.
- view, direction for, how obtained, 1114.
- will, execution of, must be proved by all witnesses, on, 1115.
- when issue, and when action, directed, 1072 n.
- cases and circumstances, under which directed, 1072 and n., 1073 notes, 1074.
- right of party or discretionary, whether, 1075 n., 1076 n., 1110 n.
- how made up, 1075 n., 1076 in n., 1110 n., 1111 n.
- may be raised and go to jury on pleadings, 1111 n.
- practice in Massachusetts, 1076 in notes, 1079 n., 1110 n., 1111 n., 1112 notes, 1114 n., 1115 n.
- should be specific, 1111 n., 2334.
- may consist of series of questions, 1111 n.
- may be amended, 1111 n.
- may be special, 1111 n.
- objections to, should be made in court from which sent, and before trial, 1111 n.
- order for, set aside and new issue framed, 1077 n.
- defendant not allowed new issue on fact not suggested in answer, 1078 and n., 1083 n.
- time when may be applied for, 1078 and n., 1079, 1080, 2334 n.
- after answer to supplemental bill, 1078 n.
- on interlocutory application, 1078 n.
- appeal from order granting or refusing, 1075, 1076 and n.
- order for interlocutory, 1079 n.
- postea* should be returned to the Chancery Court, with general statement of the trial, 1119 n.
- finding of jury should appear of record, certified by the jury, 1119 n.
- additional certificate, 1119 n.
- verdict, effect of, 1147.

ISSUE (MATTERS IN),

- amendment, not necessary to put in issue facts stated in answer, 407.
- answer, matters put in issue by, 484.
- evidence, confined to matters in, 852-860.
- general charge, effect of, in putting matters in issue, 853.
- joinder in, filing replication, 890.
- though no answer required, 513 and n.
- putting matter in, when leave to amend given at hearing, for purpose of, 418; in infant's suit, 418.

ITALY,

- receiver of property in, when appointed, 1731.

JERSEY (ISLAND OF),

- not beyond seas, within 21 Jac. 1, c. 16 (statute of limitations), 643.

JEW,

- answer of, how taken, 735; form of commission to take, 750.

JOINDER OF PARTIES (HAVING NO INTEREST),

- as defendants, 296.
- agents, 295, 296 n.
- ministerial officer, 296 n.
- residuary legatees, 296.
- bankrupts, 296.
- mere witnesses, 296.
- trustee of a corporation, 296 n.
- as members and officers of a corporation, 296.
- auctioneers and agents to sell, 297 and n.

[The references are to the star paging.]

JOINDER OF PARTIES (HAVING NO INTEREST) — continued.

- arbitrators, 297.
- attorneys, 298 and n.
- agents in fraudulent transactions, 298.
- attorneys or agents having custody of deeds, 299 and n.
- married women, 299.
- plaintiffs, 295, 301.
- persons having no interest, 295 n., 301.
or distinct interest, 301.
- auctioneer and vendor, 301, 302 n.
- two persons having distinct tenements injured by same nuisance, 303 n.
- how plaintiff may get rid of unnecessary parties, 299 n., 301.
- misjoinder, how taken advantage of, 302 and notes.
court exercises a sound discretion as to misjoinder, 303 n.
- present English practice, 303.
suit not be dismissed for misjoinder of plaintiffs, 308.
- rule applied to class suits, 304.

(See MISJOINDER.)

JOINDER OF SEVERAL DEFENCES,

- how far permitted, 787, 788.

(See DEFENCE TO SUIT.)

JOINT ACCOUNT,

- husband and wife of, payment to, no bar to survivorship, 117.
- decree made against, although co-debtor out of the jurisdiction, 149 and n.

JOINT AND SEPARATE DEMAND,

- cannot be united in one suit, 889.

JOINT CONTRACTORS,

- effect of recovery against one, 269 n.

JOINT DEBTORS,

- decree made against, though co-debtors, out of the jurisdiction, 150, 271.

JOINT INTERESTS,

- with plaintiff, persons having, necessary parties, 190, 192.

JOINT LIABILITY,

- contribution, parties to suits for, 270.
- principal and surety must be, unless proved to be insolvent, 270.
- one of several joint debtors, when suit for, may be against, 270–272.
co-executors, in case of, 271.
co-obligors, in case of numerous, 272.
co-trustees, in case of, 268, 272.
joint breach of trust, in case of, 272.
joint factors, in case of, 271.
persons liable, numerous, where they are, 272.

JOINT PROPRIETORS,

- may sue on behalf of themselves and others, when, 191, 235, 287, 238, 239.

JOINT-STOCK COMPANIES ACTS,

- what companies affected by, 26.

JOINT-STOCK COMPANY,

- all members of, not necessary parties to suit against, 191, 241, 242, 243, 272, 273.
principles on which court acts in such cases, 242, 274, 275.
- individual members may sue directors, 25, 26 and n.; as may public officer, 26.
- proof of proceedings of, 865.
- registration of, effect of, 26, 147.
- suit against, 26, 147, 272, 273; by, 25, 26.
- unincorporated, assignor of shares in, when necessary party, 199.
- unregistered, class suit on behalf of, when permitted, 288, 239.

JOINT-TENANTS,

- death of, revivor on, when not necessary, 1511 n.
- husband and wife as, 122 n.
- legacy, of, when necessary parties, 211.
- limitations, statute of, inapplicable between, 644.
- mortgage, of, when necessary parties, 211.
- parties, when necessary, 208.
- receiver, when appointed between, 1726.

[The references are to the star paging.]

JOINTRESS,

demurrer by, to bill for discovery of jointure deed, 570 and n.
plea of settlement by, 675.
sequestration not prejudiced by, 1060.

JOURNEYS,

receiver, when allowed costs of, 1747.

JUDGE,

meaning of word in decree or order, 1008.
notice of motion, should be named in, 1595.
signature of, to scheme, 1857.
Superior Court, of, signature of, judicially noticed, 866.
vacation, duties of, 985; rota of, 985 n.

JUDGE'S NOTES,

evidence, of what was proved at trial of question of fact, 1186, 1137.
motions may be used on, 1559.
new trial, application for, on motion for, 1137; at law, 1137, 1138.
viva voce evidence, of, authority of, 912, 1488.

JUDGMENT,

abatement after hearing, judgment given, notwithstanding, 64, 1017.
assignor of, when necessary party, 199.
charge, benefit of, lost at law by arrest of debtor, 1042, 1065.
secus, when arrest under attachment in equity, 1042, 1065.
charge on debtor's real estate, 1036.
time for proceedings to realize, 1037.
charging order, in aid of, 1037-1041.

(See CHARGING ORDER.)

decree or order, operation of, as, 1031-1041.

registration and re-registration of, as, 1033, 1035; what decrees and orders registered as, 1035, 1036.

how affected, 1034; fees on, 1035 n.

payment of money into court, form of order for, 1035, 1036.

if registration desired, 1036.

satisfaction on, how entered, 1035.

discharge of, pleaded as release, 669.

injunction, when granted after, 1624.

injunction to restrain alienation of property charged with judgment, 1652 n.

interest on, 1043, 1255 and notes.

joint contractors, recovery against one, effect, 269 n.

limitations, statute of, application of, to suit to realize, 654.

publication of, in breach of agreement, when restrained, 1655.

record, not a, until made up, 687.

relief against, not granted on grounds available at law, when, 1621.

stock, how charged with, 1038.

(See CHARGING ORDER.)

stop order, in aid of, 1040, 1694.

wife's, land held under, assignable by husband, 125.

wife's, effect of, right by survivorship, on, 89, 118.

JUDGMENT OF COURT OF ORDINARY JURISDICTION,

not a bar, if equitable circumstances against it, 664.

plea of, 663-665.

answer in support of, when necessary, 615, 684, 685.

averment in, 684.

(See PLEA.)

JUDGMENT (OF FOREIGN OR COLONIAL COURT),

plea of, 664; requisites of, 664.

proof of, 863.

JUDGMENT CREDITORS,

client, of, extent of solicitor's lien against, 1842.

parties to foreclosure suit, when, 277, 278.

payment out to, not ordered without consent of debtor, 1041, 1042.

purchaser, of, not necessary parties to bill for specific performance, 279.

remedy of, in equity, against real estate, 1036.

against stock, 1038, 1039, 1041.

sale of land of debtor, when entitled to, 1037.

stop order, when granted in form of, 1039, 1040, 1694.

[The references are to the star paging.]

JUDICIAL NOTICE,

facts of which it is taken, 545, 546, 866.
 civil divisions of a State, and great geographical features, as lakes, &c., 546 n.
 but not the distance of one place from another, 546 n.
 nor of foreign laws, 546 n.
 averment of facts contrary to, not attended to, 19, 546.

JUDICIAL PROCEEDINGS,

colonial or foreign court, of, proof of, 868.

JUDICIAL SEPARATION,

effect of, as to wife's *chancery* in action or reversion, 122 and n., 123 and n.
 wife who has obtained, sues and is sued without husband, 87, 178.

JUNIOR CLERK,

appointment of, and official attendance of, 1325.
 control of judge, under, 1325.
 pension and salary of, 1325 n.
 solicitor, struck off roll on appointment as, 1326.

JURAT,

affidavit to, 896, 898.
 blind man, to affidavit of, 897.
 deaf and dumb person, to affidavit of, 897.
 expression of time and place in, 897.
 foreigner, to affidavit of, 897.
 irregularity in, cannot be waived, 898.
 marksman, to affidavit of, 897.
 place of, 747, 897.
 special, 897; where oath not administered in usual manner, 897, 898.
 answer, to, 745-748, 753, 754.
 blind man, of, 746.
 cancellation of, effect of, 748.
 expression of time and place in, 746.
 foreigner, of, 747.
 guardian *ad litem*, where answer put in by, 754.
 infant, 753.
 irregularity in, must be expressly waived, 748.
 lunatic or person of unsound mind, of, 753.
 marksman, of, 746.
 married woman, of, 183, 754.
 place of, 745, 746.
 several defendants, where, 746.
 signature of official, to, 746.
 special, when oath not administered in common form, 746, 747.
 waiver of irregularity, in, 748, 898.

JURISDICTION,

affidavit, before whom sworn, out of the, 892.
 answer, how taken out of the, 744, 745, 748-753.
 (See ANSWER, COMMISSION TO TAKE.)
 another suit pending, 634 n.
 averment of, in bill, 355; now part of stating part, 356.
 bankrupt cannot sue for property out of the, 61.
 courts of United States, over suits in favor of legatees and distributees for their
 shares of estates of persons deceased, 1997 n.
 demurrer to, grounds of, 549-555.

(See DEMURRER.)

dismissal for want of, effect, 659 n., 1427 n.
 documents out of, production of, ordered, 725, 1827.
 evidence, how taken out of the, 915-919.

(See EXAMINATION OF WITNESSES, COMMISSION FOR.)

foreign and domestic suits, one when vexatious, 633 n.

infants, with respect to, 1348.

objection to, how taken, 555, 630, 712 n.

stage of cause at which it should be taken, 555, 629.

pledged, how, 314 n., 545 n., 633 n.

plea to, 628-630, 685; conclusion of, 685.

(See PLEA.)

service out of, (See SERVICE.)

statutory, 558 n. (b), 630 n., 1150 n. (a).

equity, in several States, 8 n.

regulations and rules, 3 n.

[The references are to the star paging.]

- JURISDICTION CLAUSE,
in bill, may be omitted, 1883 n.
- JURISDICTION (PERSON OUT OF),
absence of, must be proved at hearing, 152.
course, where proof defective, 153, 857.
appearance, entry by plaintiff of, for, 460.
leave to enter, how obtained, and necessary evidence, 460.
appearance, entry of, after decree, by defendant who has obtained leave to come in, 153.
attachment, issue of, against, not necessary for subsequent proceedings, 465, 466, 521, 1048 n.
copy of the bill, process by service of, under general order, not applicable in case of, 429.
debtor out of, statute of limitations, when applicable to, 647.
decree, without prejudice to rights of, 150.
decree, when allowed to come in after, 153.
order for leave to come in, how obtained, 153; in case of infants, 153; service of order, 153.
decree, coming within jurisdiction, after, when leave to serve bill on, 152.
defendant named as, and fact stated, 152 n., 154.
demurrer, for want of equity, by, 549.
executor out of, when not a necessary party, 150, 252, 271.
factor, out of, when not a necessary party, 150, 271.
guardian *ad litem*, ineligible to be, of infant, 161; or of person of unsound mind, 176.
husband out of, suit prosecuted against wife alone when, 179.
incidentally interested, not necessary party, 149.
infant out of power of court, with respect to, 1848, 1850.
infant out of maintenance, how paid, care of, 1361.
infant defendant, appointment of guardian *ad litem* for, 162.
interpleader, against, 150, 1567.
joint debtor, when not necessary party, 150.
jointly interested with plaintiff, when cause proceeded with in absence of, 219.
married woman out of, separate appearance of, when directed, 181, 182.
married woman, examination of, how taken, 94.
ne exeat, not granted at instance of, 1704.
party, not considered a, till served, 154.
party, necessary, if interest principally affected, 151.
defect arising from absence of, cured by appearance at hearing, 153.
pro confesso, taking bill, attachment unnecessary, 465 n., 521.
sufficient notice to, what is, 528.
where defendant goes away after service of bill, 519 n.
purchaser out of, when a necessary party, 151.
receiver, when appointed of property out of the, 1781.
receiver, when granted against, 1718; executor, in case of, 1722.
security for costs, when required from claimant, next friend, or applicant, 28, 113.
claimant under decree, in case of, 1205.
plaintiff must give sufficient indorsers in Massachusetts, before entry of writ, 27 n.
allowed after, on terms, if failure, by mistake, 27 n.
objection to want of, must be made at first term, or waived, 30 n.
on removal from State, after action begun, 31 n.
effect of taking step in cause after knowledge of removal, 31 n.
in New York, 30 n.
amount, 32, 33 and n.
form of bond, 38 n.
conduct of cause, when he has obtained, 29.
cross-bill, in case of, 28, 1553.
interpleader suit, in, 29, 1571.
petitions, in case of, 1605.
revivor by, 29, 1571.
subpoena ad testificandum, issue of, against, 907.
(See Costs, SECURITY FOR.)
suite against, 149-154; by, 27-36.
tenant for life out of, when a necessary party, 151.
witness, examination and cross-examination of, how taken, 910; attendance of, how procured, 918.

JURY

- called, how, 1089, 1090; view, in case of, 1090.
challenges to, 1090-1095.

[The references are to the star paging.]

JURY — continued.

- array, to the, 1091; how made, 1094; trial of, 1095.
- bias for, 1092.
- crime, for, 1093.
- defect, for, 1092.
- favor, for, to the array, 1091.
 - to the polls, 1094; trial of, 1095.
- polls, to the, 1091-1094; how made, 1094.
- principal, to the array, 1092.
 - polls, to the, 1092, 1093; trial of, 1095.
- privilege for, 1092.
- propounded, how, 1094.
- result of, 1095.
- time for making, 1090, 1094.
- common, order for, 1084.
- constitutional right to, 1071 n. (a).
- default of, new trial at law on ground of, 1128.
- discharge of, improper, new trial on ground of, at law, 1128.
- discharge of, without verdict on certain issues, when permitted, 1109.
 - without verdict, on account of illness, 1109.
- finding by, advisory, 1071 n. (a), 1078 n. (a), 1129 n. (a), 1130 n. (a).
- influencing, improperly, new trial at law on ground of, 1182.
- interested, new trial at law on ground of, 1128.
- legal rights, in cases of, parties not entitled to as of right, 1071 n., 1080, 1640, 1641.
- misconduct of, new trial at law on ground of, 1128, 1130.
 - terms on which granted, 1137, 1149.
- order for a, where appealable, 1078 n. (a), 1110 n.
- panel, return of, 1086; filing, with names of jurors indorsed, 1110; made up, how, 1090.
- patent cases, in, right to, 1071 n.
 - application for, in patent case, refused, 1071 n.
- powers of court, as to, on trial of questions of fact, 1071 n. (a), 1083.
- special, trial by, at instance of court, 1084; of parties, 1084.
 - appeal from order directing, not permitted, 1463 n.

(See ISSUE.)

- called, how, 1089, 1090.
- challenges to, 1090, 1091.
- common jurymen also to be summoned, 1084.
- costs of, when summoned at instance of parties, 1084.
 - of the court, 1084.
- issue, direction for trial of, by, how obtained, 1114.
- made up, how, 1090.
- nomination and reduction of, 1084.
- return, of, 1086.
- stage of cause at which application for should be made, 1078 n., 1079 in n., 1080, 2334 n.

(See ISSUE.)

- summons of, order for, 1084.
- swearing of, 1095.
- trial of question of fact, when directed before, 1080.
- verdict of, on trial of fact, 1107-1110.

(See VERDICT.)

Vice Chancellor cannot vary Lord Chancellor's order for, 1080.

JURYMAN,

- who may be, 1087.
- exemption, 1087; how claimed, 1089.
- illness of, 1108.
- knowledge of the case, verdict not founded on individual, 1109.
- non-attendance, how punished for, 1089.
- qualification of, 1089; in London, 1087.
 - special juryman, of, 1089.

JUST ALLOWANCES,

- account, in taking, 1231-1236, 1488, 1489.
- account, must be connected with the, 1236 and notes.
 - what are, not determined by court in first instance, 1232.
- agents, expenses of, when allowed as, 1235 and notes.
- costs, charges, and expenses of next friend of infant, 1233.

[The references are to the star paging.]

JUST ALLOWANCES — continued.

- or of personal representative, as trustee, 1233.
- claim for, made by answer, but unnoticed in decree, effect of, 1236.
- direction to make, no longer necessary, 1232.
- dower, of payments in respect of, 1233.
- legacies paid by personal representative or trustee, are, 1233.
- litigation, costs of, when, 1233, 1438.
- loss of time, of personal representative or trustee, none for, 1233.
- secus*, generally in United States, 1233 n.
- accounts of personal representatives, in United States, generally disposed of in Probate Courts, 1233 n.
- but resort to Chancery may sometimes become necessary, 1233 n.
- opinion of counsel, cost of, when a, 1233.
- personal representatives and trustees, what are, to, 1233-1236.
- resident in India, where, 1235.
- receiver, expenses of, when a, 1235.
- sale, expenses of, when a, 1233.
- solicitor, employment of, when a, 1234, 1235 and n.
- in some cases, the allowance of particular items has been directed by the decree, 1232 n.
- more modern cases exclude such direction, 1232 n.
- court will settle the construction and effect of an agreement on which account depends, 1232 n.

JUST EXCEPTIONS,

- evidence in another suit, order to read made, saving, 871.
- exhibits, order for proof of, at hearing, made, saving, 884.

KEEPER,

- of prison, affidavits and answers, when sworn before, 745.
- reports of, as to prisoners confined for contempt, 502.

KEEPER (LORD),

- bill, when addressed to, 2, 357.

KIN (NEXT OF). (See *NEXT OF KIN.*)

LACHES,

- demurrer, 560 n.
- dismissal for, 659 n.
- interlocutory injunction, effect of, on application for, 1663.
- on motion to dissolve, 1675.
- waiver of, 714 n.

LAMBETH (LIBRARY),

- record from, provable as exhibit at hearing, 882.

LANCASTER (COUNTY OF),

- administration decree in, when suit in High Court stayed after, 798.
- appeals from Court of Chancery of, 1459 n.
- attachment issued into, how directed, 463.
- return of, how compelled, 463, 470; form of return to, 471.
- demurrer that subject-matter is within jurisdiction of Court of, 554.
- office copy of record of court of, provable as exhibit at hearing, 882.

LAND,

- abroad, recovery of, 629 n.
- agreement relating to, how alleged, 365; when entered into by agent, 365 n.
- but allegation of signature not necessary, 365.
- claim for, when bound by statute of limitations, 649, 652 n., 654.
- express trust of, where, 649.
- decree for, not made under prayer for annuity, 880.
- equitable relief in suits as to possession of, 1071, 1072.
- foreclosure suit, a suit to recover, 652.
- judgments, how affected by, 1034, 1036-1038.
- lis pendens*, when affected by, 400, 1056.
- money charged on; application of statutes of, statute of limitations, in cases of, 651, 652.
- interest on, when applicable to suit for, 658.

(The references are to the star paging.)

LAND — *continued.*

new trial of issue, when matter relates to, 1124.
 one of several owners of, may sue for self and others for modus, when, 239.
 parties to suits for, 263–266.
 sequestration, from what time land liable under, 1056.

LANDED ESTATES COURT (OF IRELAND),
order of, how enforced in England, 1068.**LANDLORD,**

forfeiture of lease, when restrained from enforcing, 1660.
 injunction to restrain waste, at suit of, 1630.
 rights of, how affected by appointment of receiver, 1745.

LAPSE,

bishop, when restrained from taking advantage of, 1652.

LAW,

action at, (*See ACTION AT LAW.*)
 bill, reading of, at, by defendant, 838.
 demurrer that Court of, is proper tribunal, 550–552.
 (*See DEMURRER.*)
 depositions taken *de bene esse*, when ordered to be used at, 939.
 depositions in Chancery not admitted at, unless witness dead, 870.
 election to sue at, dismissal of bill upon, not a bar to another suit, 659.
 errors in, shown, under leave to surcharge and falsify, 668.
 examination of witnesses *de bene esse*, in aid of proceedings at, 934.
 inferences of, not to be pleaded, 372, 545.
 (*See INFERENCES LEGAL.*)
 inquiry as to matter of, when directed, 1203.
 married woman, rules of, as to suits by, 87.
 followed in Courts of Equity, 89; but no distinction made between personal
 property accrued before and after marriage, 89.
 parties to suits, where jurisdiction withdrawn from, 210.
 pauper, admission to sue as, at, 38.
 plea of judgment of court of, 662, 663.
 (*See PLEA.*)
 policy of, admissions contrary to, not permitted, 849.
 proceedings at, bill when dismissed without prejudice to, 993.
 proceedings in Chancery, proof of, at, in civil and criminal cases, 872.
 questions of, how decided by Court of Chancery, 983, 1071.
 with assistance of common-law judge, if necessary, 983.
 secondary evidence of documents, when admitted at, 878.
 will of real estate, how proved at, 874.

LEASES,

agreement to take, when license required, allegations of bill for specific performance of, 369.
 assignees of, parties to suit against, 206; statements therein, 321.
 assignment of, parties to suit for license for, 278.
 assignment of, without license, waiver of forfeiture necessary in suit for discovery of, 387.
 bill to rescind several by same lessors, multifarious, 335.
 covenants in, breach of, when restrained, 1655.
 forfeiture of, when landlord restrained from enforcing, 1660.
 infant's land, power of guardian to grant, 1364.
 receiver, sanction of court required to, 1749; how obtained, 1749.
 renewal of, forfeiture of covenant for, when relieved against, 1658.
 sanction of court to proposed, how obtained, 1343, 1344.
 conditional contract, 1348.
 evidence in support of application, 1348.
 settlement, of, 1343, 1344.

LEASEHOLDS,

renewable, receiver in case of, 1724.
 sequestration, not sold under, 1054.

LEAVE TO ATTEND PROCEEDINGS. (*See PROCEEDINGS.*)**LEGACIES,**

apportionment of costs between legacies and residue, 1433.
 appropriation of fund to meet, effect of, on married woman's, 115.
 double, *onus probandi*, in cases of, 851 and n.

[The references are to the star paging.]

LEGACIES — continued.

- forfeiture of, on marriage without consent, discovery as to, need not be given, 568.
- infant's, costs of suit for, 81.
- infant's, when paid to its father, 1798, 1802.
- infant's payment of, into court under Legacy Duty Act, 81.
- inquiries as to, in Master's office, 1214.
- interest on, computation of, 1258, notes.
- interest on, statute of limitations, when applicable in suit for, 652.
- joint parties to suit for, 211.
- lapsed, costs of administration suit, not thrown upon, 1430.
- limitations, statute of, when applicable in cases of, 652, 653.
- married woman's, release of by husband, effect of, 122.
- paid, allowed as a just allowance, 1233.
- payment of, admission of, when not an admission of assets, 236.
- real estate, charged on, legatees necessary parties to suit to raise, 225.
 - costs of suit to raise, when estate insufficient, 1425.
 - revoked, costs of administration suit not thrown on, 1430.
 - severance of, effect of, 658.
- specific, personal representative not necessary party to suit for, after assent, 249;
 - not liable to costs of administration suit, 1429.
- trustees for payment of, when legatees represented by, 214, 257, 258, 279.

LEGACIES AND ANNUITIES,

- incumbrances, affidavit as to, when required, 1214.
- inquiry as to, proceedings on, 1214.
- advertisement, when issued on, 1214.
- interest on, computation of, 1253.
- lists of, when required, 1214.

LEGACY DUTY,

- amount of, how ascertained, 1805.
- papers left on bespeaking order for payment of, 1609.
 - order for payment of, form of, 1805.
- payment of, evidence of, 1805.
- payment of amount of, to solicitor on undertaking to apply, 1007, 1804.
- provision to be made for, by decree or order, 1007, 1804.
 - proceedings, when neglected to be made, 1805.

LEGACY DUTY ACT,

- ward of court, not constituted by payment in, under, 1847.

LEGAL ESTATE,

- attornment to receiver, effect of, on, 1748.
- injunction against setting up of, 1682.
- persons having, necessary parties, 192–195; as trustees, 205, 206.
- redemption suit, in, where mortgage assigned by mortgagee, 260.
- receiver, when appointed against, 1719–1725.

(See RECEIVER.)

LEGAL RIGHT,

- damages in case of, 1641 n.
- injunction issuable at law, for protection of, 2641.
- interlocutory injunction, when granted for protection of, 1639, 1640.
 - delay, application must be made without, 1639, 1640 and n., 1641.
 - evidence on application, 1639.
- jury, defendant not entitled as a right, 1071 n., 1640, 1641.

LEGAL TITLE,

- action formerly directed to establish, when, 1072.
- Chancery, Court of, determined by, 1071, 1642.
- common-law court may issue injunction to protect, 1641.
- dispute relating to, receiver not appointed in case of, 1725.
 - unless under special circumstances, 1725.
 - as when property cannot be let, 1725.
- injunction to protect, principle on which granted, 1639, 1642.
 - application must be made without delay, 1641.
- injunction to restrain, setting up of, when granted, 1660.
 - not against purchaser for value without notice, 1660.
 - perpetual, made at hearing, 1679, 1880.
- purchase for valuable consideration without notice, plea of, to, 675.
- receiver not appointed on application of person having, 1724.
- trial, in order to ascertain, when directed, 1071, 1072, 1079, 1080; when to be by jury, 1071 n., 1080, 1640, 1641.
- trial of, in patent cases, 1642.

[The references are to the star paging.]

LEGATEE,

advertisement for, when issued, 1214.
 before Master, when entitled to attend proceedings at, 1172
 class-suit, on behalf of, when permitted, 226, 238.
 conduct of decree given to, before creditor, in concurrent suits, 800.
 conduct of suit of, change of, 1169.
 costs of, 1426, 1427, 1482.
 creditor's action restrained after administration decree, on application of, 1615.
 (See Costs.)
 evidence in former suit against executor may be read in suit of, 868.
 executor who has assented not necessary party to suit for legacy by, 200.
 limitations, statutes of, set up by, in proceedings under decree, 643.
 party, not necessary to suit against trustee for payment of legacies, 258; or for execution of trusts of surplus, 238 n., 257.
 payment out to legatee of person to whose account fund stands, not ordered in absence of personal representative, 1795.
 pecuniary or residuary, unnecessary party to suit to charge or recover personal estate, 254; except in cases of ademption, 255 n.
 real estate, if legacies charged on, when necessary party, 225.
 administration decree, at instance of, without others, 218, 225, 438.
 residuary administration decree at instance of, without serving others, 217, 218, 238, 438.
 specific, of wife's paraphernalia, when necessary party to bill relating to, 255.
 specific, suit by, for legacy, parties to, 200.
 suit on behalf of himself and others, when permitted, 238.
 suit by, against debtor to estate, when permitted, 200, 249, 823, 824.
 parties to suit, 200.

LEGISLATURE,

applications to, not restrained, 1620; exceptions, 1620.

LEGITIMACY,

onus probandi, in cases of, 851.
 perpetuation of testimony, in cases of, 1573.
 presumption of law in cases of, 851.

LEGITIMACY DECLARATION ACT,

declaration under, 1578.

LENGTH OF TIME,

demurrer for, 559.

LESSEE,

decree made without prejudice to right of, 263.
 inheritance, owner of, when necessary party to suit by, 208, 209.
 to establish right of common, 209; right of way, 210.
 lessor not necessary party to suit by lessee for tithes, when, 210.
 original, necessary party to suit by lessor against assignee of lease, 206.
 partition, when necessary party to suit for, 268.
 party, generally not necessary party, 209, 263.
 but may be to bill to restrain ejectment brought against him, 209.
 tenant in common of, necessary party to partition suit, when, 208.
 necessary parties to suit for partition by, 209.
 title of, statement of, in bill for tithes, 321.
 undivided share of, costs of, in partition suit, 1163.

LESSOR,

general right, necessary party in suit to establish, by lessee, 209.
 lessee, when necessary party to suit against assignee by lessor, 206.
 party, when not a necessary, to lessee's suit for tithes, 210.
 parol, of tithes, when necessary party, 199.

LESSOR AND LESSEE,

plaintiff's title, in suits between, how stated, 821.

LETTER MISSIVE,

peerage, defendant, having privilege of, entitled to, 442, 445.
 how obtained, 442; service of, 445, 446.

LETTERS,

admissions, used as, must be pleaded, 855.
 agreement contained in, statement of, 365.
 discovery or production, exemption from, 570-580, 1828-1835.
 when ordered, 1837 n.
 evidence, when admissible as, although not pleaded, 855.

[The references are to the star paging.]

LETTERS — *continued.*

exhibits, provable as, at hearing, 882.
publication of, restrained, when, 1646, 1647.
thirty years old, prove themselves, 878.

LETTERS-PATENT,

rescinding for fraud, 8 n.
suit by companies established under, 25.
(See PATENT.)

LEVY,

amounts of, under writs of *distringas*, 477 n.

LEWDNESS,

charge of, particular acts of incontinence provable under, 853.

LIABILITIES,

distinct, bill against persons under, when not multifarious, 837.

LIABILITY,

defendant's, to plaintiff must be shown, 321, 322.
disclaimer, improper when defendant is under, 706, 707.
joint persons, under, to plaintiff, when necessary parties, 269.
joint and several, persons under, to plaintiff, when necessary parties, 268-269.
sheriff's, for an escape, 469 n.

LIBEL,

discovery of facts tending to establish, to be given, when, 566 and n.

LIBERTY TO APPLY,

reservation of, 996; effect of, 996.
application, how made under, 996.

LICENSE,

exclusive, licensee cannot sue in his own name, 197 n., 199.
to assign lease, parties to suit for, 278.
to carry on one trade, extent of, 1658.

LIEN,

commissioners of partition have none on commission, 1168.
costs, for, not lost by issue of attachment, 1455.
dismissed defendants, have none, on plaintiff's fund, 1409.
declaration of, in specific performance suit, and sale to realize it, 1220 n.
evidence, in suit to establish, 855.
land, on, application of statutes of limitations to suits for, 654.
plaintiff, of, in interpleader suit, 1569.
purchaser's, on purchase-money, in case of sale by court, 1279.
specific, person having, when party to bill relating to personal estate, 255.
unpaid purchase-money, for, parties to suit to establish, 1658 n.

LIEN FOR COSTS (SOLICITOR'S), 1841-1846.

course of justice or prosecution of suit not allowed to hinder, 1843.
created, how, 1843.
creditor's suit, in, when conduct of, changed, 1844.
delivery up of documents ordered notwithstanding lien, on payment into court of amount of demand, 1843.
destroyed, how, 1845.
discharge of solicitor, effect of on, when by his own act, 1843.
prison, by his remaining in, 1844.
retirement of a partner, 1844.
distinction between that on documents and on a fund, 1842.
documents, not confined to, 1844.
documents, on, 1841-1845; extent of, 1842; cannot be actively enforced, 1842.
created, how, 1848.
duration of, 1848.
evidence, as between third parties, production of documents in, notwithstanding lien, 1843.
rights of persons claiming adversely or paramount, not prejudiced by, 1842.
third parties, against, confined to costs incurred previous to transfer, 1848.
documents must be produced as between third parties, notwithstanding, 1842.
entry or correction, order must be produced for, notwithstanding, 1843.
fund in court, on, 1845, 1846.
attachment of client not a waiver of, 1846.

[The references are to the star paging.]

LIEN FOR COSTS (SOLICITOR'S) — *continued.*

balance, only attaches to, 1845.
 charging order, lien has priority over, 1040, 1846.
 compromise of suit, effect of, on, 1846.
 costs of particular suit, only extends to, 1842, 1845.
 death of client, not affected by, 1846.
 destroyed, how, 1845.
 enforced, how, 1845.
 garnishee order, lien has priority over, 1040, 1846.
 infant, on fund of, by solicitor of next friend, 81.
 payment to client, not affected by order for, 1846.
 priority between successive solicitors, 1845.
 stop order, lien not affected by, 1696.
 trust property, where it is, 1845.
 fund ordered to be paid, for costs, on, 1846.
 infant's title-deeds, solicitor of next friend has none on, for costs, 81, 1842.
 judgment, creditor of client, on, against, extent of, 1842.
 limitations, statute of, lien not barred by, 1846 n.
 loss of property itself, lien not permitted to occasion, 1843.
 orders and papers must be produced for cause notwithstanding, 1843.
 partners, new, have none for previous business, 1844.
 payment to solicitor, or into court, retainer until, 1848.
 personal representative of solicitor, extends to, 1844.
 production ordered notwithstanding, 1827.
 prosecution of suit, not allowed to occasion delay in, 1843, 1844.
 real estate, none on, unless charge thereon declared, 1846.
 rights of persons claiming adversely or paramount, not prejudiced by, 1842.
 third parties, against, confined to costs incurred previous to transfer, 1842.
 set-off, 1846 n.; on fund ordered to be paid for costs, 1846 n.

LIFE INTEREST,

purchaser of, when liable to pay interest, 1277.
 wife's right to a settlement attaches to, 91, 92, 104.
 except against husband's particular assignee for value, 104.
 wife entitled to arrears of, not received by husband, 104.

LIFE (TENANT FOR),

contingent remainder-men, when bound by decree against, 229.
 costs of application for payment of income to, 1798.
 costs of, how raised, 1438, 1457.
 death of, when a total determination of suit, 1511 n.
 intermediate, when necessary party, 228.
 leaseholds, of, bound to renew, receiver, when appointed against, 1724.
 partition, when remainder-man not necessary party to suit for, by, 209.
 successive, form of order for payment of interest to, 1799.
 waste by, restrained, when, 1629; where waste equitable, 1683.
 at suit of mesne tenant for life, 1629.
 parties to suit, 227.

LIGHTS (ANCIENT),

obstruction of, when restrained, 1638.

LIMITATIONS,

executory, persons claiming under, when necessary parties, 228.
 over, discovery must be given where forfeiture has the effect of, 568.
 unless the disqualification statutory, 568.
 persons claiming under, when necessary parties, 227-231, 264.

LIMITATIONS (STATUTES OF),

absence beyond seas of creditor, not a bar to, 21 Jac. c. 16, 647, 648.
 account, offer to, or rendering of, sufficient to bar, 646.
 accounts, application of, to, 640 and n., 641 notes.
 acknowledgment, what sufficient to bar statute, in simple contracts, 646.
 account, offer to, or rendering of, 646.
 dower, in suit for arrears of, 653.
 legacy, or money charged on land, in case of, 651, 652.
 interest on, in suits for, 653.
 mortgages, in case of, 650-652.
 rent, arrears of, in suits for, 653.
 simple contract, in cases of, 646.
 acquiescence, effect of, on, 650.
 administrator, 648 n. (b), 648.

[The references are to the star paging.]

LIMITATIONS (STATUTES OF) — continued.

- agent, 641 n.
- answer, insisting on benefit of, by, 639 n., 714.
- assignee, runs against, when, 648.
- bankruptcy, effect of, in case of, 648.
- cestui que trust*, bound by, where not set up by trustee, 644.
- claims under decree, disputing, on the ground of, 1210, 1211.
effect of, on, 1211.
- creditor may set up, in proceedings under decree, 648, 644, 1210.
- creditors coming in, in class suit, effect upon, 236 n., 1210 n. (a).
sending in claim, does not stop, 642 n.
- debtor out of jurisdiction, when applicable to, 648.
- debts, when applicable to bill for payment of, 640.
decree for payment of, when a bar to, 643.
devise for payment of, 642.
trust for payment, when a bar to, 642.
- debts barred by, how revived, 642.
- demurrer, on the ground of, 559, 560.
- discovery, bill of, pleadable to, 689, 640, 1559.
- dismissal of bill, not a bar to, 648.
- dower, when, to suit to recover arrears of, 658, 1166.
- ecclesiastical benefices, application to, in case of presentation to, 654.
- ecclesiastical or eleemosynary corporations, application to, 654.
- equity, application of, in courts of, 559, 560 n., 648, 649.
- executors not bound to set up, 643 and n.
- executors, does not run to bar action against, until proof, 648.
unless *de son tort*, 648.
- filings of the bill, when a bar to, 648.
- foreclosure, application to suits for, 652.
- fraud, when applicable in case of, 645.
concealed, when applicable to, 649.
- hearing, oral plea of, at, permitted, when, 655, 712.
- imprisonment of creditor, when not a bar to, 647.
- infant, when they do not run against, 647.
- insolvency, effect of, in case of, 643.
- intestates, when applicable to claims on estates of, 649, 652 n.
- joint tenants, inapplicable between, 644.
- judgments, application of, in cases of, 654.
- land, claim for, when barred by, 649, 652 n., 654, 691.
express trust of, in case of, 649.
- legacies, application to suits for, 649, 651, 652, 653, 654.
interest on, to suit for, 658.
- legatee may set up, in proceedings under decree, 644.
- lien, application of, in cases of, 654.
- lunatic, when they do not run against, 647.
- married woman, when applicable in case of, 641 n., 647.
- merchants' accounts excepted from, 641.
- mistake, inapplicable in case of, 645.
- money charged on land, application to suit to recover, 651, 652.
interest on, to suit to recover, 653.
- mortgages, application in cases of, 650–652.
- oral plea of, at hearing, when permitted, 655, 1210 n.
- outstanding terms, application to bills to prevent the setting up of, 639.
- parceners, inapplicable between, 644.
- partners, between, 641 n., 644 n. (a).
- part payment, barred by, when, 647.
- personal representatives not bound to set up, 643.
- plea of, 609, 618, 639–655, 1559.
answer in support of, 618, 654, 655; fraud, in cases of, 645.
averments in, negative, 654, 655; positive, 654.
fraud, in cases of, 645.
form of, 654. (See PLEA.)
- redemption suits, application to, 639 and n.
- rent, claim for, when barred by, 649, 653.
arrears of, when barred by, 653, 654.
express trust of, in case of, 649.
- revivor, how far a bar to, 1542.
- separate estate of married woman, demand on, not barred by, 642.
- simple contract, in cases of claims by, 654.

[The references are to the star paging.]

LIMITATIONS (STATUTES OF) — continued.

solicitor's lien, not barred by, 1846 n.
 specialty, actions on, application to, 647.
 supplemental answer not permitted for purpose of raising, 781.
 tenants in common, applicable between, 644.
tort, in case of, not barred by acknowledgment, 647.
 trustee and *cestui que trust*, not applicable between, 644, 649, 653.
 unless possession of trustee adverse, 644, 645.
 trusts, express, when applicable to, 649.
 United Kingdom, or dependent islands, not beyond seas, within, 648.
 unsound mind, person of, does not run against, 647.
 defence of, must be raised by plea or answer, &c., although plaintiff does not require answer, 2115 n.

LIMITED COMPANY. (See COMPANY LIMITED.)

LIMITED OWNER,

conveyance by, under order for raising fund, 1345.
 vesting order, now usually made, instead of, 1345 n.

LIQUIDATED DAMAGES,

equitable relief, when refused in case of, 1657.

LIS PENDENS,

amended bill, when it operates as, 402, 403.
 applies only to suits proceeding to final decree, 280 n.
 foreign suit, 815 n.
 registry of, statutory provisions as to, and how effected, 400.
 re-registry of, statutory provisions as to, and how effected, 400.
 satisfaction of, how entered, 400, 401.
 effect of decree, after registered, 280.
 when it commences, 280 n.
 effect, and in what cases, 280 n.

LITIGATION,

costs of, a just allowance, when, 1239, 1438.
 foreign court, in, appointment of receiver pending, 1726.
 injunction and receiver granted, pending, although misjoinder, 304.
 Probate (Court of), in, appointment of receiver pending, 1726.
 protection of property pending, one person may sue for self and others, 245, 433 ;
 but they must be served with notice of decree, 432, 433.
 repeated, of the same question restrained, 1861.

LITIGATION (ALLOWANCE PENDING). (See ALLOWANCE, PENDING LITIGATION.)

made, when and how, 1202.

LOCAL ACT,

plea of, 658 ; must set out Act, 658 ; must be upon oath, 658.

LONDON (CITY OF),

Court of Equity of, demurrer that it is proper tribunal, 554.
 Court of, office copy of record of, provable as exhibit at hearing, 882.
 suit by, to establish a right to duties, 274

LONG VACATION,

commencement and termination of, 412.
 closing evidence, enlargement of time for, on expiration in, 889.
 time for filing affidavits in motions for decree, enlargement on expiration in, 821, 822

LORD MAYOR'S COURT,

judgment of, plea of, 663.

LORD OF MANOR,

may file bill against new tenant to establish right of common, 274.
 necessary party, when, 263, 264.

LORDS JUSTICES,

decree of, not reheard by Master of the Rolls or Vice-Chancellor, 1474.
 enrolment, may be vacated by, 1028.
 form, with Lord Chancellor, Court of Appeal in Chancery, 1471.
 powers of, 1471, 1474.

LOSS OF INSTRUMENT,

equitable relief in case of, 392.

(See INSTRUMENT.)

[The references are to the star paging]

LOT,

shares, when drawn by, in case of partition, 1158.

LUCID INTERVAL,

onus probandi, rests on party alleging, 852.

LUNACY,

appeals in, heard by what court, 1492.

defendant of, *pendente lite*, supplemental order on, 1525.

demurrer, on the ground of plaintiff's, 83.

disability, arising in case of plaintiff's, 66, 88; of defendant's, 130, 175.

office copy of order or report, in, admissible as evidence, 871 n.

plaintiff, of, *pendente lite*, supplemental order on, 1525.

after decree, stay of proceedings on, 85.

plea of plaintiff's, 84, 630.

summary jurisdiction, where property small, 86 n.

transfer of wife's fund to credit of husband's, a bar to her right by survivorship, 115.

LUNATIC,

answer of, put in by committee or guardian, 177, 178, 753.

heading, of, 731; jurat to, 754.

read against him, whether it can be, 178, 841.

Attorney-General, information by, on behalf of, 9, 82.

committee, sues by, 9, 82; unless committee adversely interested, 9.

necessary party to suit against, 175, 176, 249.

or on behalf of, 84, 85.

(See COMMITTEE OF IDIOT OR LUNATIC.)

co-plaintiff with Attorney-General or committee, named as, 9, 88, 208.

unless an idiot, 84.

custody of, how given to committee, 9 n.

Declaration of Title Act, 1862; concurrence of, in application under, how given, 1872.

decree against, valid, 177 n.

defence conducted by committee, 175.

unless committee is plaintiff, petitioner, or adversely interested, 176.

when conducted by guardian *ad litem*, 176.

(See GUARDIAN AD LITEM OF PERSON OF UNSOUND OR WEAK MIND.)

sanction of Lord Chancellor or Lords Justices necessary to, 175.

demurrer on the ground that plaintiff is, 84.

demurrer of, filing of, when committee adversely interested, 591.

first tenant in tail being, person entitled in remainder to next estate of inheritance necessary party, 227 n., 265.

husband, separate answer of wife, how obtained in case of, 499.

information on behalf of, 9, 82; relator necessary in, 12, 13.

limitations, statute of, does not run against, 647.

mortgagee, costs of, 1389.

necessaries for, 85 n.

ne exeat, issued at instance of, on affidavit of committee, 1704, 1706.

next friend of, 86 n., 83 n.

next of kin of, cannot sue during lunatic's lifetime, 816.

partition suit, share of, how dealt with under Trustee Acts, 1161.

plea on the ground that plaintiff is, 84, 630.

prisoner, appointment of guardian for, 503.

purchaser under sale by court, discharge of, 1282.

relator, cannot be a, 14.

respondent to petition, appointment of guardian *ad litem* to, 176.

setting aside acts of, 82, 83; contracts by, 85.

suit by, to avoid his own act, when permitted, 9, 83.

suits on behalf of, 82-86.

sanction of Lord Chancellor or Lords Justices necessary to, 85.

witness, when admissible, 1098.

LUNATIC (NOT SO FOUND BY INQUISITION).

(See UNSOUND OR WEAK MIND, PERSON OF.)

MADNESS,

particular acts of, provable under charge of insanity, 853.

MAINTENANCE,

costs of inquiries as to, 1481.

demurrer because discovery will subject defendant to penalties of, 563.

[The references are to the star paging.]

MAINTENANCE — *continued.*

- infant, of, proceedings for, 1356–1362.
- application for, how made, 1360; when necessary, 1357.
- capital, not usually allowed out of, 1359.
- County Court, when within jurisdiction of, 1356 n.
- evidence on application and service, 1360.
- expenditure of, guardian not bound to account for, 1361.
- father's lifetime, not usually ordered in, 1358; exceptions, 1359.
- fund in court, out of, application for, how made, 1356.
- income tax, when deducted from, 1360.
- increase of, application for, how made, 1360.
- inquiry as to, when directed, 1360.
- mother's ability, allowed without reference to, 1359, 1360.
- payment of, where infant and guardian abroad, 1361.
- power of trustee or guardian to allow, 1356.
- power for, usually inserted in settlements, 1358.
- implied by statute, when, 1356.
- stock, power to court to order, out of dividends on, 1356.
- suit, ordered without, when, 1357.
- married woman, her right to, out of her own property, 101–109.
- advances for, by stranger, repaid, 103.

(See **SETTLEMENT, EQUITY TO.**)

- unsound mind, of person of, allowance for, when and how ordered, 1361, 1362.

MALA FIDES,

- enrolment of decree or order vacated for, when, 1026, 1027.

MALICE,

- general, allegation of, when scandalous, 348.

MAN (ISLE OF),

- answer, how taken in, 744.
- not beyond seas, within statute of limitations, 648.

MANAGEMENT (OF PROPERTY),

- Chambers, proceedings at, for, 1842–1344.
- infant, of proceedings for, 1362–1365.

MANAGER,

- appointed, when and how, 1731 and n., 1768, 1769.
- collieries and mines, in case of, 1727, 1768.
- jurisdiction of property out of, 1731.
- newspaper of, 1727 n.
- partnership, in cases of, 1727–1729.
- railway, 1731.
- commission, when entitled to, 1769.
- death of, provision for, 1769.
- priority, has none over mortgagee, when, 1769.
- security, given by, 1731; when dispensed with, 1768.

MANDAMUS,

- proceedings on, not restrained unless applicants plaintiffs in equity, 1620.

MANDATE,

- Chancellor of County Palatine to sheriff, of, 463.
- return of, how compelled, 463, 470, 471.

MANOR,

- discovery of title to, not compelled in case of adverse claimant, 579.
- partition of, how effected, 1157.
- tenant of, class-suit by, 239; against, 274.

MANOR (LORD OF),

(See **LORD OF MANOR.**)

MANSION (FAMILY),

- pulling down, by tenant for life, restrained, 1683.

MANURABLE,

- seisin of things, how alleged, 362.

MANUSCRIPT,

- treatises, publication of, restrained, when, 1647.

MAP,

- piracy of, restrained, 1645.

[The references are to the star paging.]

MARITIME LAW,
judicially noticed, 546.

MARKET,
tolls, receiver of, appointed, 1731.

MARKSMAN,
affidavit of, how taken, 897; jurat to, 897.
answer of, how taken, 746; jurat to, 747.

MARRIAGE,
children of, inquiry as to, when directed, 859.
concealed, with husband's consent, wife's answer read against him, 184.
defendant *feme sole*, of, no abatement, 188.
disability, arising from, 66, 84.
disputed, service of bill, in case of, 445 n., 452.
dissolution of, how former wife sued after, 179 n.
order for, effect of, as to wife's chose in action, 123 n.
on husband's power to release, 122, 128.
order for payment out, between decrees *nisi*, and absolute for dissolution,
effect of, 118.
payment out, upon, 1802.
forfeiture on, without consent, discovery not compelled, 183, 568.
guardian *feme sole*, of, determination of office, 1858.
law, effect of, on right to sue at, 87-89.
next friend of infant, of, incapacitates her, if female, 77 n.
order for payment, after, effect of, 97.
perpetuation of testimony of, bill for, does not lie at instance of tenant in tail and
his children, 816; or of eldest son of heir in tail of a dignity 817.
plaintiff *feme sole*, of, an abatement, 118, 1507, 1515.
revivor on, 1515, 1538; who entitled to obtain, 1538.
motion for, or dismissal of bill on, 818.
order of revivor, when not necessary, 118.
want of, effect of, 118.
second, discovery as to, where it has effect of limitation over, 568.

MARRIAGE ACTS,
settlement under, form of, 105.

MARRIAGE BROCAGE BOND,
setting aside, costs of suit for, not allowed, 1398.

MARRIAGE SETTLEMENT,
parties to suit, to rectify, 109 n.
purchase for valuable consideration, and may be so pleaded, 675.
if post-nuptial, ante-nuptial agreement must be shown, 675.

MARRIED WOMAN,
acknowledged deed, payment out of court to, without, 100, 1802.
address of, if plaintiff, usually stated in bill, 359.
advances by stranger for maintenance to, when repaid, 108.
agreement by husband to assign chattel real of, effect of, 126.
annuity of, not bound by husband's assignment or release, 123.

plea of husband's insolvency, in suit for, 108 n.

answer of, when, joint with husband, 516.

admissions in, how far binding, 184, 185.

infant, put in by guardian, where she is, 183, 754.

not binding, when she takes a new interest, 188.

proceedings in default of, 469.

read against husband, when, 184.

title of, when marriage after bill filed, 731.

answer, separate, of, 178, 180, 182 and n., 183, 185, 498, 499, 500, 787, 740, 754,
774.

admissions in, how far binding, 185.

compelled, may be, when, 499.

insufficient, costs of exceptions to, 774.

jurat to, 183, 754.

lunatic, when husband a, 500.

oath or signature, how put in without, 737.

order necessary for, unless to husband's bill, 182, 499.

or accepted by plaintiff, 182.

when plaintiff may obtain order for, 181.

sworn and filed, how, 183, 754.

time for, 183, 740, 754.

[The references are to the star paging.]

MARRIED WOMAN — continued.

- appeal of, is by next friend, 110 n., 187, 1482.
- appearance of, entry of, by, 587, 588 ; by plaintiff, for, 476.
- proceedings in default of, 476.
- separate of, when directed, 181.
- appointees under will of, when necessary parties, 226.
- when some allowed to sue for all, 226, 238.
- appropriation of fund to meet legacy to, effect of, 115.
- arrears of life interest not received by husband, effect of, 104.
- attachment against, for want of answer, order necessary, 183, 499.
- application for order, how made, 183, 499.
- appearance, for want of, how issued, 476.
- award giving her fund to husband, effect of, 118.
- bill, service of, when authorized, 445
- bond belonging to, effect of release by husband of, 123.
- breach of injunction by, husband when relieved from consequences of, Add. iii.
- chattels real of, her right by survivorship to, and effect of husband's assignment on, 123-128.
- (See **SURVIVORSHIP, RIGHT BY.**)
- civil death of husband, 87, 88 and n.
- attainted and banished, 87, 88.
- alien or abroad, 88 and notes.
- chose in action* of, right by survivorship to, and effect of husband's assignment on, 115-121, 119 n., 120 notes.
- (See **REDUCTION INTO POSSESSION. SURVIVORSHIP, RIGHT BY.**)
- right to wife's *chose in action* accruing during coverture, 90 n., 116 n.
- legacy, 90 n.
- effect of husband's bankruptcy on, 121 n.
- consent of, to payment to husband required, 90-98, 97; effect of giving, 96.
- foreign domicile, when consent not taken in case of, 97.
- land, required when fund arisen from sale of, or to be invested in, 99.
- refusal, effect of, 100.
- settlement, nature of, in case of, 101, 108.
- order, when made by, 101.
- reversion or remainder, not taken when property is in, 98.
- revocation of, 97.
- separate estate, not required in case of, 100.
- unless payable to husband, 100.
- separate receipt, required where fund to be paid to her, 98.
- taken, how, 92-94.
- (See **EXAMINATION OF MARRIED WOMAN.**)
- consent of, necessary to suit on her behalf, 110; unless an infant, 110 n.
- objection on the ground of a want of, by whom taken, 110 n.
- to order of court, how far binding on her, 118 n.
- co-plaintiff, in suit by husband for her property, must be, 90.
- costs of, 118, 1163.
- costs of, exceptions for insufficiency, payment of, by, 774.
- costs, liable to, on continuing suit after death of husband, 114.
- coverture, plea of, by, when sued as *feme sole*, 631.
- effect of coverture at common law, 87.
- creditor of husband, as, 109 n.
- death of, in joint suit, effect of, 114.
- death of, abatement on, where defendant, 188.
- death of, before settlement executed, effect upon survivorship, 107.
- debt due to, effect of proof in bankruptcy by husband for, 118.
- effect of release of by husband, 122.
- decree, no personal, made against, 186.
- proceedings usually taken under the Trustee Acts, 186 n.
- decree or order for payment to husband in her right, effect of, 115, 118.
- defence, when and how she may obtain order for separate, 181, 182.
- defendant, not made a, for purpose of discovery only, 299.
- or for discovery against her husband, 184.
- demurrer, separate, of, 591 ; order for, necessary when, 591.
- deposit of her property in court by husband, effect of, 115.
- deserted by husband, 88 n.
- deserted, repayment to stranger of advances to, 108.
- disclaimer of, insufficient to protect from giving discovery as to fraud, 707.
- discovery against husband, not made party, in order to obtain, 184.
- divorced from bed and board, 88 n.

[The references are to the star paging.]

MARRIED WOMAN — continued.

- refused support by husband, 88 n.
- equity to settlement of, 90-108.
 - (See **SETTLEMENT, EQUITY TO.**)
 - in the United States, 90 n., 122 n.
- estoppel by conduct, 187
- examination of, on dealing with her fund or property, 98-101.
- expectancy, charging, 206 n.
- felony, need not answer so as to expose a husband to charge of, 184, 563, 564.
- feme sole*, when permitted to sue as, 87 n., 89.
 - statement of fact in bill necessary, 359.
- feme sole*, suit instituted by, as, stayed, 113 n.
- foreclosure decree binding on, 187.
- forfeiture, need not answer so as to expose herself to, 183, 568.
- formal defendant, service of copy of the bill on, when necessary, 429.
- fund of, formerly carried to separate account, 92, 1374, 1795.
 - present practice, 92, 1374, 1795.
 - trustee may pay to husband before suit, 101; *secus* after suit, 101.
 - guardian *ad litem*, ineligible to be, of infant, 161.
 - of person of unsound mind, 176.
 - heiress, will not established on admission of, 185, 876.
 - husband, defendant to suit against her, 109, 178; exceptions, 178, 179.
 - husband, joinder of, as co-plaintiff, 109; effect of joinder, 108, 636.
 - husband, need not join in answer of, 498.
 - husband, necessary party, usually a defendant to her suit, 109.
 - husband, when she may sue at law without, 87.
 - husband, when she may be sued without, 87-89, 109 n., 179 n.
 - husband, when she may be sued by, 109, 179; effect of suit, 109 n., 179 n.
 - may bestow her separate property upon husband by appointment or otherwise, 100 n., 186 n.
 - may charge it with his debts, 186 n.
 - may become debtor of her husband for money to improve her separate estate, 186 n.
 - infant, defends by guardian, 163, 183.
 - (See **GUARDIAN AD LITEM OF INFANT.**)
 - inheritance of, not bound by admissions in her separate answer, 184, 185.
 - or in her joint answer with her husband, 185.
 - or in husband's separate answer, 185.
 - bill relating to, not taken *pro confesso* against her, 185.
 - resulting trust of satisfied term created out of, 125.
 - interest of, in chattel real, incapable of vesting during coverture, not assignable by husband, 127.
 - judgment of, effect of husband's assignment of, 125.
 - judgment in action for her property, effect of, 118.
 - land held by, under decree, until payment, effect of husband's assignment of, 125.
 - legacy of, effect of appropriation of fund to meet, 115.
 - release of, by husband, effect of, 122.
 - life interest, entitled to arrears, if not received by husband, 104.
 - limitations, statute of, does not run against, 647.
 - maintenance, right of, to, out of her property, 101-108.
 - marital rights and duties renounced by husband, 88 n.
 - mortgage in fee, effect of husband's assignment or bankruptcy, 125.
 - mortgage for years, effect of husband's assignment of, 125.
 - mortgage by her and her husband, resulting trust in, 125.
 - motions on behalf of, how made, 108, 109, 1595.
 - ne exeat* granted at instance of, against husband, 1705 n.
 - ne exeat* not granted against, if executrix or administratrix, 180, 1704.
 - new defence, when entitled to make, 188.
 - next friend, sues by, 108-113, 109 notes.
 - (See **NEXT FRIEND OF MARRIED WOMAN.**)
 - next of kin, interest as, effect of release by husband of, 122, 123.
 - notice of decree, service upon, of, 438.
 - paraphernalia of, specific legatees of, when, necessary parties, 255.
 - partition suit, costs of, 1163 and n.
 - party to suit for her own property, must be, 89, 90.
 - pauper, appeal by, 38, 39, 111, 187 n., 1482.
 - suit, by, without next friend, 38, 39, 111.
 - defence as pauper, 180 n.
 - payment into court of her fund to credit of joint cause, effect of, 115, 1778 n.

[The references are to the star paging.]

MARRIED WOMAN — *continued*

- of joint account, 116, 1778 n.
- payment to her and husband, effect of decree or order for, 118.
- payment to trustees for her, of her fund, effect of, 116.
- payment out of fund of, practice on, 93, 100, 1792.
- (See EXAMINATION OF MARRIED WOMAN. SETTLEMENT, EQUITY OF.)
- payment out to, as personal representative, form of order for, 1800.
- personal estate of, bound by admissions in her joint or separate answer, 184.
- personal representative, suing as, husband should be co-plaintiff, 89, 90.
- petition on behalf of, 1604.
- plea by, title of, 681 ; if marriage after bill filed, 681.
- plea of coverture by, 681 ; order for leave to put in necessary, 681.
- possibility of issue, 1795 n.
- power vested in, suit relating to execution of, 109 n.
- pro confesso*, when bill may be taken against, 523.
- process against, not issued without leave of court, 445, 499.
- proof in bankruptcy by her husband for her debt, effect of, 118.
- promissory note of, effect of part payment to husband, 116.
- promissory note given by, *dum sola*, effect of husband's bankruptcy on, 116 n.
- effect of his release of, 122.
- real estate of, wife not a necessary party to bill to charge husband's interest in, 189 n.
- reduction to possession of wife's *choses in action*, 114 n., 115 n.
- administration on her death leaving *choses in action*, 114 n.
- husband's right to reduce cannot be exercised by his guardian, 116 n.
- evidence of reduction, receipt of dividends by husband, 117 n.
- release by husband of her *choses in action*, effect of, 122.
- rents and profits of her real estate, 128 n.
- restraint on anticipation, 100 n.
- reversion or remainder of, assignment of, under statute, 119, 123.
- husband's assignment, not bound by, 119.
- though prior estate previously assigned to her, 119.
- power of court to compromise in suit for, 119 n.
- reversionary *choses in action*, form of stop order on, 1696.
- reversionary fund in court not paid out to, on obtaining assignments of previous interests, 99.
- sale under decree, bound by, 187.
- satisfied attendant term of, not bound by husband's assignment, 125.
- Scotch law as to her *choses in action*, 128.
- security for costs, by, 111 n., 113 n.
- separate estate of, 100, 109, 118, 179, 184, 186 ; bound by joint or separate answer, 185.
- separate estate of, how charged, 186, 187, 269 n.
- discovery, as to, when bound to give, 188.
- may sue and be sued in respect of her separate estate, 87 n.
- leave given to apply for payment of costs out of, when, 187.
- plea of previous suit by husband and wife bad to suit by her alone, 108, 636.
- suit against husband in respect of, 109.
- separate receipt of, payment on, 98.
- service of bill on, when authorized, 445 ; formal defendant, when she is a, 429.
- substituted service upon, 448.
- suits against, 178-189 ; by, 87-128.
 - if marriage dissolved, in her maiden name, 179 n.
 - under protection order, how described, 179 n.
- suit by next friend on her behalf, without her consent, dismissal of, 110.
- suit, institution of, by, subjects her to liabilities of *feme sole*, 113.
- suit, when prosecuted against, alone, though husband co-defendant, when, 180.
- suits by, in Federal courts, 87 n.
- survivorship, right by, 115-128.
- (See SURVIVORSHIP, RIGHT BY.)
- tenant in tail, payment out of fund of, 99.
- term of, effect of husband's assignment upon condition, of, 126.
- term of, effect of divorce à *mensâ et thoro* upon, 126.
- term of, power of husband over, 124.
- transfer of her fund to credit of husband's lunacy, effect of, 115.
- transfer of property of, by husband, restrained, when, 1652.
- traversing note, not filed against, unless defending separately, 516.
- trust term of, assignable by husband, 124 ; created with consent of husband, not assignable by him, 125.
- trustee acts, proceedings under, to enforce decrees against, 186 n.

[The references are to the star paging.]

MARRIED WOMAN — *continued.*

trustee relief act, payment in under of fund of, when justifiable, 101.
under-lease by husband of her term, effect of, 126.
when entitled to rent reserved by, 126.
undertakings as to damages, when required from, 113.
witness, tender of expenses to, 908.

MARSHALLING OF ASSETS,
parties to suits for, 237.

MASTER OF HOSPITAL,
revivor of suit by, 28.

MASTER IN ORDINARY,
office of, abolished, and powers of, transferred to judges, 1322.

MASTER'S OFFICE,

abolished in England, 1168 n., 1322.
still exists in United States, 1168 n.
to what Master reference made, 1168.
in United States courts, 1168 n.
solicitor of party should not be Master, 1142 n.
case begun before one Master should be completed by him, 1168 n.
notice to appear before one Master, returned by another, 1168 n.
change of Master, 1168.
conduct of the cause, 1169.
to whom it belongs, 1169 and n.
in United States courts, 1169 n.
proceeding where plaintiff omits to carry in decree, 1169 and n.
or omits to prosecute decree afterwards, 1169, 1170.
where suit has abated, 1170.
order of reference, basis of Master's authority, 1300 in note, 2193 n., 1296 n.
what the order should specify, 1004 n., 1221 n., 1231, 1232 in note.
of warrants, 1170.
assignment of time and place by the Master, by rule of the United States courts,
1170 n.
and notice to the parties, 1170 n.
when Master may proceed *ex parte*, or adjourn, 1171.
duty to proceed without delay, 1170 n.
form of Master's warrant, 1170.
reasonable notice to be given, 1170 n.
Master's duty to regulate proceedings before him in United States courts, 1171, n.
Master may proceed *de die in diem* at his discretion, 1171.
every warrant peremptory, 1171.
proceeding *ex parte*, when to be reviewed, 1171.
default and certificate thereof, 1171, 1172.
costs in such case, 1171.
parties entitled to attend, 1172.
general rule, 1172.
restrictions in certain cases, 1172, 1173.
Master to decide upon the rights of parties to attend, 1173, 1174.
redress in case of improper decision of Master on this point, 1174.
Master's power as to solicitors, 1174.
quasi parties, rule as to, 1174.
defendant must be served with warrants where bill taken *pro confesso* after appear-
ance, 1175.
otherwise where so taken for want of appearance, 1175.
order for appearance necessary, 1175.
parties entitled to attend may, but not obliged to, take copies of proceedings,
1175, 1176.
production of documents, 1176 *et seq.*
(See PRODUCTION OF DOCUMENTS.)

discretionary in Master, 1176.
may order inspection instead of production, 1176.
parts of books not relating to case may be sealed up, 1177 n.
how production enforced, 1176, 1177.
course where party ready to produce deeds, &c., 1177.
course where adverse party not satisfied with the production, 1177 and n
Master to allow reasonable time to examine books, &c., produced for further
examination as to, 1155 n.
where party requires further time to produce documents, 1177, 1178.

[The references are to the star paging.]

MASTER'S OFFICE — *continued*.

- or wishes opinion of Master as to his duty to produce, 1177.
- production dispensed with, and inspection granted, 1178.
- proceedings in case of default in not producing, 1178.
 - Master's certificate of, 1178.
 - contempt, proceedings for, 1179.
 - how contempt cleared, 1179.
 - documents when brought in are to be deposited, 1179.
 - order for delivery out to enable party to put in examination, 1179.
 - when purposes of production accomplished, 1179.
 - examination of parties, 1180.
 - in discretion of Master under the general order, 1181.
 - his refusal to examine, 1181.
 - exception to, 1181.
 - where the direction to examine parties is omitted in the order, 1180 and n.
 - by interrogatories, *viva voce*, or in both modes, 1180 n.
 - question of convenience, 1180 n.
 - oral examination universal, both as to parties and witnesses, in New Jersey, 1180 n.
 - in Massachusetts, witnesses and parties examined same in equity as at law, 1180 n.
 - in States where parties to record are made witnesses no order to examine them necessary, 1180 n., 1181 in note.
 - rule in United States courts, 1180 n.
 - as to parties, or creditors, or others coming in to claim, 1180 n.
 - interrogatories, 1181.
 - by whom carried in, 1181.
 - how prepared and settled, 1181.
 - exception to certificate of Master, allowing interrogatories, 1182.
 - form of the exceptions, 1182.
 - Master may examine a party *toties quoties*, and receive new interrogatories at any time, 1182.
 - how examination of party compelled, 1183.
 - how examination prepared, 1183.
 - party bound to give all the information he has or can obtain by reference to books under his control, 1183 n.
 - examination of party in nature of an answer, 1184.
 - where party to be examined is of unsound mind, 1184.
 - scandalous or impertinent matter expunged from examination, 1184.
 - mode of determining as to insufficiency, 1184.
 - rule as to sufficiency, 1185.
 - consequences of one or more insufficient examinations, 1185, 1186.
 - costs where examination reported insufficient, and where sufficient, 1186.
 - to what extent party's examination may be used against him, and by whom, 1186, 1187.
 - Master may use it, if party examining does not, 1187.
 - court may use it on hearing exceptions to Master's report, 1187.
 - supplemental examination, 1187.
 - examination of persons coming in upon claims, 1187.
 - rule of United States courts as to, 1180 n., 1187 n.
 - evidence before the Master, 1187.
 - pleadings in cause, 1188.
 - for what purpose evidence, 1188.
 - affidavits, depositions, and documents, 1188 and n.
 - report of, 1299 n. (a), 1302 n.
 - examinations before Master, 1188.
 - admissions before Master, 1188.
 - of such parties as are competent, 1188.
 - proceedings in cause may be used, whether used before or not, 1189.
 - depositions in another cause, 1189.
 - affidavits already used in cause, 1189.
 - not admissible in inquiries under decrees unless by consent, 1189, 1190 and note
 - time when Master is to decide whether cause to be heard on affidavits, 1190.
 - where affidavits read without objection, 1190
 - rule excluding affidavits extends only to decrees, or decretal orders, 1190.
 - or preliminary inquiries, 1191.
 - affidavits in reply, 1191.
 - witnesses previously examined in a cause, 1191.
 - may be examined before Master by same party only on order, 1191.

[The references are to the star paging]

MASTER'S OFFICE — *continued.*

- but may be examined for other side, 1191.
- reasons for this, 1191.
- order for, and mode of proceeding upon such re-examination, 1192.
- and cases in which court will permit re-examination to same facts, 1193.
- witness re-examined *vivæ voce* upon subject of former examination, 1193.
- where witness has merely proved exhibits, 1193.
- consequence of re-examining witness without order, 1193.
- where re-examination on different points, 1193.
- cross-examination of former witness, order for, 1194.
- examination of parties as witnesses by each other depends on the same rules as examination of parties before decree, 1194.
- exceptions, 1194.
- previous order for examination of party, 1194.
- method of examining witnesses before Master, 1180 notes, 1195.
- taking down *vivæ voce* evidence for use on considering report, 1195 and n.
- expenses, 1195 n. (a.)
- interrogatories to witnesses, 1195.
- how prepared, 1195.
- Master must receive them, 1196.
- limitations on rule, 1196
- examination preceded by state of facts, 1196.
- examinations on interrogatories before the Master, 1196.
- mode in which Master is to examine witnesses on interrogatories, 1197.
- examination on the interrogatories by examiner, 1197.
- by commission, 1197 and n.
- publication of, 1197.
- further examination after publication, 1197.
- vivæ voce*, Master cannot examine witnesses already examined, 1198.
- mode of compelling witness to attend Master, 1198 and n.
- warrant to examine *vivæ voce*, 1198.
- no publication necessary of *vivæ voce* examination, 1198.
- state of facts, 1199.
- form and character of, 1199.
- how verified in Vermont, 1200 n.
- further state of facts, 1200.
- of scandal and impertinence in proceedings before Master, 1200.
- whether Master can expunge scandalous matter without order of court, 1201.
- how matter of expunging brought before court, 1201.
- costs of inquiries as to scandal and impertinence, 1201.
- allowance pending litigation, 1202.
- inquiries as to heirs-at-law, next of kin, creditors, &c., 1202.
- general objects of references, 1202.
- for what purposes references directed, 1203.
- inquiries, 1203.
- advertisements for next of kin, &c., to come in, 1203.
- how obtained, &c., 1204.
- limitation of time, 1204.
- parties admitted after time elapsed, 1204.
- where fund has been apportioned, 1205.
- when some legatees have been paid, 1205.
- terms imposed, 1205.
- Master should only notice claims of parties who have proved, 1206.
- parties not coming in, not precluded from filing new bill, 1206.
- second suit after a distribution of the estate, against whom, 1207.
- when first suit by single creditor, 1208.
- persons having notice of former suit, 1208.
- against whom new bill must be filed, 1208.
- claims, how brought in, 1209.
- state of facts, 1209.
- how supported, 1209.
- examination of claimant, 1209 and n.
- evidence, 1210.
- on affidavit, 1210.
- mode of proving bond debts, 1210.
- defence, 1210.
- statute of limitations, 1210, 1211.
- allowance of claim, 1211.
- creditor becomes *quasi* a party, when his claim is admitted, 1211.

[The references are to the star paging.]

MASTER'S OFFICE — continued.

- special directions as to vouchers and books of account, 1231 n.
- executor discharging himself, when he has paid over to co-executor, 1230.
- party not discharged on his own oath without order, 1231.
- where party has *bond fide* dealt with property as his own, and feeling under no obligation to keep accounts, 1231, 1241 n.
- no allowance in respect of general expenses unless items specified, 1231 and n.
- just allowances, 1232.
- court does not say in first instance what are, 1232.
- what are just allowances, 1232–1238.
 - (See **JUST ALLOWANCES.**)
- accounts in suits for redemption of mortgaged premises, 1236–1248.
 - (See **REDEMPTION.**)
- effect of Master's report in regard to mortgagee's account, 1248.
- order for Master interlocutory when, 1168 n.
- partnership accounts, 1248.
 - form of decree for, 1248.
 - method of taking, 1249.
 - not usual to determine in decree for, as to just allowances, 1249.
 - use of partnership books as evidence, 1222 n., 1250 and notes.
 - production of books and papers in taking, 1250.
 - material documents to be produced, though privileged between partners and other persons, 1250.
 - where partner has books and will not produce, 1250.
 - balance not generally struck in account until charge and discharge gone through, 1250.
- Master not to make *rests* unless directed to do so by decree, 1251 and n.
- object of making *rests* and when allowed, 1251 and notes.
 - case for *rests* must be made out, 1251 n.
 - in case of mortgagee taking possession, 1251 notes.
 - where no interest in arrear, 1251 notes.
 - where interest is in arrear, 1251 notes.
 - rests* frequently ordered on further directions, yearly or half-yearly, 1251.
 - usual direction is for annual *rests*, 1251 n.
 - when case for *rests* arises, 1251 and notes.
 - practice of parties as to, 1258 n.
 - partnership accounts, dissolution, time for, 1258 n.
 - proceedings by Master when *rests* ordered, 1251, 1252.
 - direction not to disturb settled accounts, 1252.
 - surcharging and falsifying, 1252, 1253 and n.
 - computation of interest, 1258.
 - usual direction as to, in regard to debts, legacies, &c., 1258.
 - when executor or trustee chargeable with compound interest, 1258 n.
 - on legacies, 1258 and notes.
 - on debts by specialty, 1254.
 - when secured by a penalty, 1254.
 - in what cases Master may go beyond penalty, 1254 and n.
 - upon judgments and decrees, 1255 and notes.
 - on arrears of annuities, 1255.
 - on debts by simple contract, 1258.
 - from what time, 1255 and n.
 - on promissory notes, 1257.
 - on stated accounts, 1257 and n.
 - where there is a trust for payment of debts, 1258.
 - by creditors under a trust, 1258.
 - charged by will of debts of another person, 1258.
 - computed to date of report, 1258, 1259.
 - subsequent interest, 1259.
 - computation with *rests* or compound interest, 1259.
 - principle of requiring a party to pay compound interest, 1259 n.
 - what he may be presumed to have made, 1259 n.
 - rules respecting compound interest, 1259 n.
 - rule on computing when partial payments have been made, 1260 n.
 - dividends in bankruptcy treated as payments on account, 1260.
 - by law of what place interest determined, 1260 n.
 - additional accounts and inquiries, 1260, 1261.
 - to what extent, 1260.

[The references are to the star paging.]

MASTER'S OFFICE — *continued.*

- application for order, how made, 1261.
- settlement of deeds and other conveyances, 1261.
 - time for objections, 1261.
 - statement of, 1261.
 - settlement of draft, 1261.
 - costs, 1262.
 - allowance of deed, 1262.
 - certificate, 1262.
 - execution of deed, 1262.
 - exceptions to report, 1262.
- appointment of new trustees, 1263.
- sales of estates, 1264—1294.
- subjects of reference, 1168 n. (a).

(See **SALE.**)

- report, 1294—1322.

(See **REPORT OF MASTER.**)

- filing and confirmation of report, 1803.
- exceptions to report, 1809.
- review of report, 1819.
- amendment of report, 1821.

compensation of Master, 1304 notes.

MASTER (TAXING). (See TAXING MASTER.)

MATERIALITY,

question or statement, of, to be considered in deciding on sufficiency of answer, 769, 1555.

MEASURES,

legal, judicially noticed, 546.

MEDICAL MAN,

communication to, not privileged, 576.

MEMBER OF PARLIAMENT. (See PARLIAMENT, MEMBER OF, AND PRIVILEGED PERSON.)

MEMORANDUM,

affidavit at foot of, 899.

notice of the decree, indorsement of, 486.

service of copy of bill on formal defendant, of entry of, 429, 430.

certificate of entry of, to be left on bespeaking minutes, 431, 1010.

necessary before certificate to set cause down granted, 431.

order for entry, how obtained, 430; where service after time, 430.

minutes, to be left on bespeaking, 431, 1010.

production of, at hearing, 431, 482.

service of notice of the decree, entry of, 436.

certificate of, 436; fee on, 436 n.

copy of, for Chambers, 436.

direction for, how obtained, where service irregular, 435.

MERCHANDISE-MARKS ACT,

trade-marks, provisions of, as to, 1649 and n.

MERCHANT,

assistance of, how and when obtained, 983.

(See **EXPERT.**)

MERCHANTS' ACCOUNTS,

excepted from statute of limitations, 641.

MESSENGER,

action on bail-bond, not precluded by sending, 489.

answer, order for messenger, on return of *cepi corpus* to attachment for want of, 490; subsequent proceedings, 490—499.

appearance, not sent to compel, 489 n., 471.

contemnor improperly out on bail, brought to the bar by, 1047.

costs on bringing up contemnor by, 508.

order for, on return of *cepi corpus* to attachment for want of answer, 490.

subsequent proceedings, 490—494.

returns by, 490.

time for bringing up defendant by, 490.

vacancy in office of, sergeant-at-arms ordered to bring up defendant, 490.

MILL,

partition of, how effected, 1157.

owners of, joining as plaintiffs, 803 n.

(The references are to the star paging.)

MINERALS,

sale of, separate from land, with sanction of court, 1873, 1874.

MINES,

manager of, when appointed, 1728-1729, 1768.

purchaser of, when entitled to possession, 1277.

receiver, when appointed of, 1727.

MINISTER, BRITISH,

answer, where sworn before, 747.

certificate of, proving authority of foreign official before whom affidavit has been taken, 892 and n.

MINUTENESS,

of plaintiff's interest, immaterial, if existing and indefeasible, 817.

MINUTES (OF DECREE OR ORDER), 980, 1001-1014.

alterations in, registrar's power to make, 1014.

bespeaking copies of, 1008 and n., 1009.

counsel's indorsement of, when acted on, 980 n., 1008 n.

counsel's signature to, when required, 972 n., 1014.

injunction, service of, when sufficient, in cases of, 1673, 1684.

papers left on bespeaking, 1009-1012.

preparation and issue of, 1008, 1009.

registrar, taken down by, 980.

settlement of, 1012, 1013.

· appointment to settle, when given out, 1012; adjournment of, 1013.

attendance at, and consequences of default, 1012.

filing of, 1015.

service of, time for, how effected and proved, 1012.

without appointment or notice, 1015.

speaking to cause upon, when permitted, 1013.

time for bespeaking, 1009.

variation of, how effected, 1014.

motion for, when made, 1013, 1014; to what court, 1013.

time for, 1114.

MISBEHAVIOR,

general charge of, acts of misconduct, how far provable under, 853, 854.

MISCASTING,

decree or order in, rectification of, after enrolment, when permitted, 1030.

schedules in, 1081.

MISCONDUCT,

acts of, how far provable under general charge of misbehavior, 853, 854.

conduct of proceedings changed for, 1169.

executor of, receiver when appointed, in consequence of, 1722.

husband deprived of income of wife's property for, 108.

jury, of, new trial on account of, 1123; at law, 1030.

mortgagee, of, effect on his right to costs, 1890, 1891.

next friend removed for, 75, 76.

opposite party, of, new trial on ground of, 1181, 1182; costs of, 1827.

party of, effect on his right to costs, 1397, 1399.

sale, in managements of, opening biddings for, 1290.

solicitor, of, summary remedy for, under general jurisdiction, 1840.

trustee, of, effect on his legal right to costs, 1412, 1415-1421.

wife deprived of equity to a settlement for, 104.

witness, of, new trial on ground of, at law, 1182.

MISDEMEANOR,

answer of defendant in jail, for proceedings in default of, 498.

plaintiff under sentence of, not required to give security for costs, 82.

MISDESCRIPTION,

next friend of, security for costs required in case of, 859 and n.

plaintiff, of, security for costs required in consequence of, 858.

secus, in cross-bill, 359.

plaintiff, of, plea on ground of, 680.

MISDIRECTION,

judge of, new trial of issue on ground of, 1123; at law, 1126.

costs of first trial, 1138, 1149.

GENERAL INDEX.

2567

[The references are to the star paging.]

MISJOINDER,

amendment, leave for, when given at hearing, in cases of, 298, 294, 308.
former practice in case of, 288, 234, 301, 302; present practice, 234, 308, 304.
injunction, or receiver to protect property pending litigation, notwithstanding,
304.
of subjects, 335-346.
of parties, 287 n., 302 n., 339 n.

(See JOINDER OF PARTIES.)

MISNOMER,

correction of, in title of cause, by answer, 781; by plea, 681.
formal defendant, of, how cured, 430.

MISSIVE LETTER, (See LETTER MISSIVE.)

MISTAKE,

account not opened for, 668.
action restrained on ground of, 1623.
answer, in correction of, when permitted, by amendment of answer, 777, 778, 779;
when by supplemental answer, 779, 780.
court, of, dismissal of bill without costs, in case of, 791.
decree, impeachment of, for, 664.
discharge of purchaser on ground of, 1284.
form of suit, in, infant not barred by, 73.
judge, of, new trial at law on ground of, 1125; costs, 1049, 1138.
judgment, impeachment of, for, 664.
law, in, injunction not issued to relieve against, 1622 and n. (a).
limitations, plea of statute of, inapplicable in case of, 645.
mutual, bill filed under, dismissal of, without costs, on plaintiff's application, 791.
next friend of infant not deprived of costs out of estate, for, 80.
rectification of, in proceedings on behalf of charities, 13, 384.
of infants, 73, 384.
witness of, new trial at law on ground of, 1133.

MODUS,

class suit, when permitted in cases of, 239.
decreed on defendant's admission under general relief in tithe suit, 380.
evidence in case of, 860.
issue, right to, in cases of, 1074.
owner of inheritance necessary party to suit to establish, 209, 262.
parties to suit for, 239, 862, 276.
proved by defendant, plaintiff may have decree for, 380.

MONDAY,

notices given too late on Saturday to stand for, 537.

MONEY,

expression of, in decree or order, 1004 n., 1005, 1788, 1784.
payment into court of, 1770-1798.
(See PAYMENT INTO COURT.)
payment out of court of, 1794-1816.
(See PAYMENT OUT OF COURT.)

MONTH,

defined, 1812 n. (a).
how computed, 353.

MORAL CHARACTER,

discovery must be given as to facts reflecting on, 565.
unless they render defendant liable to spiritual censure, 565.

MORAVIAN,

affirmation of, how taken, 898.
answer of, how taken, 746; form of commission to take, 749, 750.

MORTGAGE (See FORECLOSURE.)

accompanied by bond, one not redeemable without the other, 890, 381.
account in suit for redemption of, 1236-1248.

(See REDEMPTION SUIT.)

assignee of, last, only necessary party, 194.
assignment of, parties in case of, 194, 215, 260, 281.
costs, to raise, 1344-1346, 1433, 1456.
deed, when provable as exhibit at hearing, 888.
husband and wife, by, resulting trust in, 125.

[The references are to the star paging.]

MORTGAGE — continued.

investment in, 1389-1342.

(See INVESTMENT IN PURCHASE OR ON MORTGAGE OF LAND.)

limitations (statute of), application of, in cases of, 650-652, 654.

notice of, proved by one witness and corroborative circumstances, though denied by answer, 847.

persons interested in money, necessary parties to foreclosure or redemption suit, 212, 215, 258.

unless interests sufficiently represented, 212, 259.

plea of none, in foreclosure suit, 605.

purchaser assuming, 605 n.

raising money by, 1344-1346.

(See RAISING MONEY BY SALE OR MORTGAGE.)

settlement of, parties in case of, 259.

several, to same mortgagee, are not redeemable without others, 330.

surplus of fund raised by, when real estate, 1345.

wife's, assignable by husband, if for years, 125; *secus*, if in fee, 125.

wife's, in fee, not affected by his bankruptcy, 125.

decree for balance, after sale on bill for foreclosure, and payment enforced by execution, in United States Circuit Courts, 1042 n.

MORTGAGEE,

account directed at instance of, against purchaser from mortgagor, though not prayed, 880, 381.

in suits for redemption, 1288-1248.

(See REDEMPTION SUIT.)

assignment of mortgage by, necessary parties after, 194, 215, 280.

made a party to account for rents received, 261.

claimants under, in redemption suit, costs of, 280.

costs of, 327, 1385-1394, 1424.

(See Costs.)

costs of, at law, account of, not directed on motion under 7 Geo. II. c. 20, unless alluded to in bill, 327.

creditors of, sufficiently represented by trustees, where assignment for their benefit, 212.

derivative, when necessary parties, 194, 261.

original mortgagee necessary party to foreclosure suit by, 215.

devisee of, parties to foreclosure suit by, 194, 216, 221.

different estates for one sum, of, can require their simultaneous redemption, 212.

different estates mortgaged by one mortgagor, of, can require their simultaneous redemption, 218.

although one a mortgage of personality and the other of realty, 213.

discovery whether a trustee, not required in redemption suit, 570.

election between suit and action, not put to, 815.

entry by, for condition broken, and suit for debt at same time, 284 n.

what to be recovered in suit, 284 n.

how value of land ascertained, 284 n.

heir of, when necessary party, 193, 216, 221; when not, 193, 194, 215, 216.

foreclosure suit by, parties to, 221.

heir of, may redeem property, 221.

injunction against, to restrain alienation, *pendente lite*, 1652 n.

land, necessary party to suit for, 263.

mortgagor necessary party to suit by second to redeem first, 213.

offer by, to redeem, when necessary, 214, 386.

original, necessary party to suit by derivative to foreclose, 215.

partition suit, when necessary party to, 279.

personal representative of, foreclosure suit by, parties to, 221.

personal representative of, necessary party to redemption suit, 285.

personal representative of mortgagor necessary party to suit by, as general creditor, 284, 285.

possession, in, receiver not appointed against, 1717-1719.

unless paid off, 1719.

direction to make annual rents, not added to ordinary decree against, 1251.

security to refund, when taken on payment off of, 1719.

prior, not necessary party to foreclosure suit, by subsequent, 279; but is to redemption suit, 280.

production of documents by, when directed, 1885.

prove against personality for whole debt, and realize his security, permitted to, 284.

rule otherwise in Massachusetts, 284 n.; where it is held

[The references are to the star paging.]

MORTGAGEE — continued.

that if he proves for whole and accepts dividend for whole, he waives the mortgage, 284 n.
how value of mortgaged property fixed in case he retains it and proves for the balance, 284 n.
purchaser of, necessary party to suit to set purchase aside, 278.
receiver, when appointed at the instance of, 1727.
second may redeem first without subsequent incumbrancer, 280.
second, receiver, when appointed at instance of, 1716.
solicitor, costs, 1235 n. (a), 1414 n. (a).
title of mortgagor, when not required to discover, 581.

MORTGAGOR,

account directed against purchaser from, at instance of mortgagee, though not prayed, 380, 381.
bankrupt, not necessary party to foreclosure suit, 215, 255.
contempt in, cannot apply for account of amount due, 505.
offer by, to redeem mortgagee necessary, when, 214, 280 n., 386.
party to suit by second mortgagee to redeem first, 214.
receiver, when appointed against, 1717, 1718; jurisdiction, when out of the, 152, 1718.
redemption of one of several estates, mortgaged for one sum, without the others, not permitted, 212.
or one of several estates mortgaged by him to one mortgagee, 213.
although one mortgage of personality and the other of realty, 213.
redemption suit by, parties to, 258, 259.
sale or mortgage of property by, when restrained, 1665.
title of, mortgagee not bound to discover, when, 581.
trustee of, necessary party in foreclosure suit, 193.
waste by, when restrained, 1630.

MORTGAGOR AND MORTGAGEE,

plaintiff's title in suits between, how stated, 321.

MORTMAIN ACT,

costs, when devise declared void under, 1429.
frauda, plea of the statute of, not permitted in cases under, 657.

MOTION FOR DECREE, 819-827.

accounts in answer not admitted by service of notice of, 822.
affidavits on filing after expiration of time, leave for how obtained and costs, 821, 822.
affidavits, plaintiffs in chief, time for filing and list of, 821.
in reply, time for filing, and list of, 822.
enlargement of, how obtained, 822; notice of, to registrar, 822.
long vacation, on expiration in the, 822.
jurisdiction, where notice served out of the, 822 n.
defendants, time for filing, and list of, 821.
enlargement of, how obtained, 821, 822; notice of, to registrar, 822.
long vacation, on expiration in the, 822.
jurisdiction, when defendants served out of the, 821.
amendment of bill, after service of notice of, 416, 819.
after unsuccessful motion for decree, 826.
answer may be treated as affidavit on, 821, 888; not if put in by deceased defendant, 821 n.
answer, reading of, on, by plaintiff, 821.
by defendant or co-defendant, 822, 841, 842.
sufficiency of, admitted by service of notice of, 766, 820, 1821.
appeal from order on, 826, 827.
briefs on, 826 n.
cause heard on, may be taken *pro confesso*, 819 n.
cause heard on, as to defendants added after replication, 819.
cause, when suitable to be heard on, 827.
comparative advantage of, 827.
cross-examination of defendant on his answer, in cases of, 821, 823.
cross-examination of witnesses on, 823; cross causes in, 824.
how taken, 824.
time for, 824, 913.
time for giving notice to produce witness for, 823, 914.
enlargement of, how obtained, 914.
evidence on, manner of taking, 821, 888.

GENERAL INDEX.

[The references are to the star paging.]

MOTION FOR DECREE — *continued.*

evidence taken in another suit, used on, when, 870.
exceptions for insufficiency cannot be taken after service of notice of, 766.
ex parte examination of witness, irregular in cases of, 901 n.
hearing of, 826.

(See HEARING.)

injunction, motion for, turned into motion for decree, 825, 1600.
notice of, 820; form of, 820; when service out of jurisdiction, 820.
advertisement of, not permitted, 820.
order made on, 826; how drawn up, 826.
taken in accidental absence of a party, when allowed to be reopened, 826.
papers for use of court at hearing, 825.
printing evidence on, 825, 902, 903.
production by the plaintiff after service of notice for, 1821.
replication, not filed where cause heard on, 819 n.
right to, suspended, pending time to answer, 742.
service of notice of, 819, 820; an acceptance of the answer, 766, 821, 1620.

(See SERVICE.)

substituted service of, 820.
setting down, 824; notice of, 803, 825.
short cause, hearing as, 825; by consent, 825.
solicitor, non-attendance of, at hearing, penalty for, 826.
subpoena duces tecum, in cases of, 824.
supplemental bill, hearing on, 1325; evidence in such case, 1325.
time for giving notice of, 819; extension of, 819.
when time to answer enlarged, 819.
time for setting down, 802, 824, 825.
time for voluntary answer enlarged, pending motion for decree, 819.
traversing note, cause may be heard on, after filing of, 516, 819.

MOTIONS, 1591-1608.

abandoned, what are, 1487, 1601, 1602.
costs of, 505, 811, 812, 1379, 1597, 1601.
contemnor cannot apply for, 505.
payment of, necessary before renewal of motion, 1368, 1380.

(See COSTS.)

admissions by answer, motion on, not a waiver of its insufficiency, 702.
affidavits on, 1598.

cross-examination on, 1599; how taken, 1599.
notice of reading, when necessary, 1598.
search for, 1598.
time for filing, 1598; injunction in cases of, 1598.
withdrawn, cannot be, 1598.

appeal from order made on, 1473, 1487, 1488, 1608.

(See APPEALS AND REHEARINGS.)

applications made by, 1587.

attornment to receiver for, 1743.

award in referred suit, to make a rule of court, 1860, 1861.

branch of court, to which made, 1588.

briefs on, 1598 n.

claimant under decree, by, 1591.

contempt cannot be made by person in, when, 503-505, 1591.

costs of, 1600-1602.

(See COSTS.)

course, of, 1591, 1592; how made, 1592, 1593.

orders on, 1591-1598.

(See ORDERS OF COURSE.)

days appointed by court for, 1594.

definition of, 1591.

depositions on, time for filing, 911.

different sorts of, 1591.

of course, or special, 1591.

meaning of "orders of course" or "motions of course," 1591 n., 1592 n.

what motions and applications are of course in United States courts, 1592 n.

disability, by person under, 1595.

discharge for irregularity of order of course, for, 1590.

form of notice of motion, 1595.

discharge or variation of order on, 1472, 1487, 1602.

GENERAL INDEX.

[The references are to the star paging.]

MOTIONS — *continued.*

- dismissal of bill, for, on plaintiff's application, 791-793.
- because filed without authority, 807.
- on defendant's application, on satisfaction of plaintiff's demand, and payment of costs, 794, 795.
- non-prosecution for, 800-812.
- dismissal of bill for, on non-performance of condition, 1598.
- enforcing decree or order, application relating to, made by motion, 1587, 1588.
- ex parte*, when and how made, 1590, 1591.
- costs of, 1878, 1379, 1600-1602.
- discharge of order on for suppression of material facts, 1593.
- evidence on, 1597-1599, 1598 n.
- appeals in case of, 1488, 1608.
- belief as to, when admitted on, 1599.
- oral, on, 1599; how taken, 1599.
- examination of witness, irregular before service of notice of motion, 889.
- hearing of, 1595, 1597, 1599.
- infant, how made, on behalf of 77, 78, 1595.
- information suit, in, on behalf of whom made, 1595.
- injunction, for, 1683, 1689; for dissolution of, 1675.
- married woman, how made on behalf of, 109, 1595.
- matters which may be decided on, 1599.
- minutes, to vary, 1018, 1014.
- mode of making, and course of proceeding on, 1597-1599.
- ne exeat*, for, 1708.
- next friend, when made by, 1295.
- next friend, for purposes of application, necessary, when, 77, 78, 1595.
- notice, when made on, 1591, 1592.
- notice of, 1593-1597.
 - amendment of bill after service of, effect of, 425, 1602, 1671.
 - branch of court, marking for, 1588, 1595.
 - committal for breach of injunction, for, 1684.
 - contemnor may give, 506.
 - form of, 1594; special leave, when made by, 1594, 1596, 1667.
 - irregularity, to discharge order for, 1594.
 - join in, who may, 1595.
 - judge, naming in, 1595.
 - pauper, by, 41, 1594.
 - reference to, in order founded thereon, 1002.
 - reference to record on, 1002.
 - service of, 1568, 1595-1597, 1608.
 - several objects may be included in, 1594.
 - signature to, 1594.
 - terms of order sought, statement of, 1594.
- open biddings, to, 1291.
- order *nisi*, to make absolute, made *ex parte*, 1593; evidence upon, 1593.
- order on, must not, except by consent, exceed notice, 1599.
 - affidavit of service, when taken on, 1599.
 - discharge of variation of, 1602.
 - drawn up, how, 1602.
 - enforcing, 1591.
 - marking with name of judge, 1588.
 - outlaw, cannot be made by, when, 1591.
 - papers left on bespeaking minutes of orders made on, 1009, 1010, 1602.
 - previous proceedings, matters proved on, may be noticed on, 1599.
 - process of the court, application relating to, usually made by, 1599.
 - pro confesso*, to take bill, 519, 520.
 - purchaser under decree, on behalf of, 1591.
 - quasi party, on behalf of, 1591.
 - receiver, for, 1735, 1736.
 - refusal of, taxation of costs on, without formal reference, 1442, 1601.
 - restraining order (statutory) for discharge of, 1690.
 - review, for leave to file bill of, or in the nature of, 1578.
 - review, to take bill of, off file for irregularity, 1578, 1579.
 - revive suit, or dismiss bill, to, 812-814.
 - revive suit or discharge prisoner for contempt, to, 1543, 1544.
 - revive suit or discharge receiver, to, 1544.
 - revive suit or dissolve injunction, to, 1548, 1554, 1679.
 - saving, 1598; where to take bill *pro confesso*, 521.

[The references are to the star paging.]

MOTIONS — continued.

security for costs, on ground of, mis- or non-description of plaintiff, 358.
jurisdiction, because plaintiff out of, 33.
service of notice of, 1595-1597.
set aside award, to, 1858.

(See SERVICE.)

special, 1591-1593; either *ex parte* or on notice, 1592, 1598.
days for making, 1594.
in United States courts, 1592 n.
special leave for, when necessary, 1594, 1598.
statutory jurisdiction, under, 1587, 1588.
stay of proceedings for. (See STAYING PROCEEDINGS)
submission to arbitration, rule of court, to make, 1858.
support of, who may be heard in, 1595.
variation of minutes, for, 1013, 1014.
withdrawal of appeal, for, 1483.

MULTIFARIOUSNESS, 383-346.

definition of, 384 and notes.
no positive, and invariable rule of; established by courts, 334 n.
circumstances govern each case, 384 n.
demurrer for, 341 n., 346 and notes, 349 n., 559.
instances of, 385-346, 384 notes, 338 n., 339 notes, 341 n.
342 n., 344 notes, 345 n.
objection for, cannot be raised at hearing, except by court, 346, 715.
sua sponte, notice of, by court, 346 n.
difference between, and misjoinder, 385.
objection apparent on bill, when waived, if not taken by demurrer, 346 n.
obviated, by removing the distinct and independent claim, 346 n.
prayers of bill, 334 n., 345 n.

MUNICIPAL CORPORATION,

bill of, need not be under corporate seal, 312 n.
may be defendant to a creditor's bill, 236 n.

MUSEUM, BRITISH (LIBRARY OF),

record from, provable as exhibit at hearing, 882.

MUTUAL CONVEYANCES,

partition suit, in, 1161.

NAME,

defendant's, statement of, at end of bill, 389.
number of, inserted in one attachment, 464.
subpoena ad testificandum, in, 907; *duces tecum*, 907; for costs, 1451.
to hear judgment, 968.
petitioner's, statement of, 1604.
plaintiff's statement of, in bill, 355, 357; omission, how taken advantage of, 358.
plaintiff's solicitor and agent, and of plaintiff if acting in person, to be inserted at
end of bill, 389.
plea for misdescription of, 858, 680.
restraining use of, 552 n.
sheriff, of, returns to process made in, 469.
solicitor, of, or of party (if acting in person), to be written or printed on writs or
summons, and on all proceedings left at Record and Writ Clerk's office,
397, 454; and in agency cases, principal solicitors also, 397, 454.

NATURALIZATION ACT, 1870, 47,

NE EXEAT REGNO (WRIT OF),

account, issued in cases of, 1700.
affidavits, on application for, 1706-1709.

on application for discharge of, 1718 and n.

account, in cases of, 1703, 1707, 2163 n.

committee of lunatic, when sworn by, 1705, 1706.

copies of, furnishing, 900, 1709.

debt, positiveness required as to, 1702, 1703 n., 1706.

oath must be positive as to debts, but belief sufficient as to amount, 1703 n.

so as to the purpose to go abroad, the oath should be positive, 1707 and n.

in the United States courts, it must appear by proof that defendant intends
soon to depart, 1707 n.

[The references are to the star paging.]

NE EXEAT REGNO (WRIT OF) — continued.

- facts to be shown by, 1707, 1708.
- filing of bill, must not be sworn before, 1709.
- infant, may be made by, 1707.
- married woman, may be made by, 1704 and n., 1705 n., 1706.
- sworn before whom, and when, 891, 1709.
- amendment of bill, not dissolved by, 424, 1714.
- amount to be marked on the writ must be shown, 1703, 1709 n.
- court directs the sum, 1709 n.
- sheriff must take bond in sum directed, 1709 n., 1710 n.
- for form of bond, 1710 n.
- personal representative, when application made against, 1710.
- reduction of, 1710.
- specific performance, in suit for, 1700.
- application for, how made, 1706.
- arrest for another demand, granted after, 1701.
- not issued, though person not liable to, at law, 1699.
- bail for same demand, not granted if defendant has been held to, 1701.
- bill, statements of, in cases of, 1705.
- cases in which issued, 1698–1705.
- certificate of bill filed, when required, 1709.
- cestui que trust*, issued at instance of, 1699.
- colonies, when issued against person domiciled in, 1703.
- concurrent jurisdiction, issued in cases of, 1700.
- not if defendant previously held to bail for same demand, 1701.
- contributory, under Winding-up Acts, against, 1705.
- costs, whether issued in cases of, 1700, 1705.
- course of business, not granted against person going abroad in, 1704.
- debt to applicant, must be actually due, 1702.
- defendant, at instance of, against plaintiff, 1705; against co-defendant, 1705.
- definition of, 1698.
- demand enforceable out of the jurisdiction, granted in respect of, 1703.
- discharge of, 1712–1714.
- answer and further order, when granted till, 1713.
- application for, how made, 1712 and n.
- damages, inquiry as to, on, 1714.
- Insolvent Debtors Act, on defendant taking benefit of, 1714.
- irregularity, for, 1712.
- merits, upon, 1712, 1713.
- payment into court of the amount, on, 1713 and n.
- subsequent arrest at law for same demand, no ground for interference of the court, 1714.
- terms of no action being brought, on, 1714.
- on giving security to abide decree, 1704 n., 1713 n.
- taking poor debtor's oath, 1698 n., 1711 n.
- equitable demands, only issued on, 1698.
- evidence on application for, 1706–1708.
- ex parte*, application for, made, 1707.
- execution of writ, 1710, 1711.
- deposit of amount marked may be taken, 1711.
- discharge of defendant when arrested under, how obtained, 1710.
- doors not to be broken open, on, 1710.
- security must be satisfactory to sheriff, 1711.
- sheriff, duty of, on, 1710.
- foreign state, when granted against person domiciled in, 1703, 1704 n.
- foreigners, when granted between, 1703, 1704.
- not granted against, on foreign contract, unless plaintiff British subject, 49, 1703.
- foreign executor or administrator bringing funds from abroad, 1704 n.
- indorsement on writ of amount for which security is to be given, 1702, 1709, 1710.
- personal representative, when issued against, 1710.
- specific performance, when issued in cases of, 1700.
- Ireland, against person domiciled in, 1703.
- jurisdiction, going out of, previously to discharge of, effect of, 1712.
- jurisdiction, not granted at instance of person resident out of the, 1704.
- lost instrument, issued in case of, 1700.
- lunatic, granted at instance of, on affidavit of committee, 1705.
- married woman, personal representative, not granted against, 180, 1704.
- married woman, granted at instance of, against husband, 1704 and n., 1705 n.

[The references are to the star paging.]

NE EXEAT REGNO (WRIT OF) — continued.

- pecuniary demands, on which issued, 1702 and n.
- prayer for, 356, 388, 389 n., 1705; part of relief, 356.
- return of writ, 1711; forms of, 1711.
- Scotland against person domiciled in, 1703.
- solicitor, against, 1700.
- specific performance, when granted in suit for, 1700.
 - not if applicant's equity doubtful, 1701.
- summons, suit in, 1705.
- summons, application for, when made by, 1706 n.
- surety, granted whenever applicant liable as, 1705.
- surety, discharge of, 1713; not ordered before decree, 1712.
 - on payment of marked amount, although larger sum due, 1714.
 - as to the obligation of surety, 1711 n.
- undertaking as to damages, on application for, 1708.
 - assessment of damages, on, 1714.
 - next friend of infants, how given by, 1708, 1709.
- writ of, preparation and issue of, 1709; fees on, 1709 n.
- written bill, may be filed in cases of, 896, 442, 1706.
- cases showing when granted in different States, 1698 n., 1699 n.
- now become ordinary process in equity, 1698 n.
- must be granted in proper case, 1698 n.
- resorted to to obtain equitable bail, 1698 n.
- proper use of the writ, 1698 n.
- security for the debt not the only reason for the writ, 1698 n.
- not confined to mere equitable demands, 1699 n.
 - exceptions, 1699 n.
- debt must be certain in its nature, 1702 n.
 - as to claims for unliquidated damages, 1702 n.
 - may be applied for, at any stage of suit, 1705 n.
 - by petition, without prayer in bill, 1705 n., 1706 n.
 - debt need not appear by affidavit; by Master's report is sufficient, 1706 n.
 - or by reference to accounts or documents, 1706 n.

NEGATIVE PREGNANT,

- traverse of interrogatories, must not be by, 725, 726.

NEGLIGENCE,

- pleading, 324 n.

NEGOTIABLE INSTRUMENT,

- transfer of, restrained, when, 1651.
 - application usually made *ex parte*, 1651, 1664.
 - evidence on application, 1651.
 - forged indorsement, in case of, 1651.

NEUTRAL,

- resident in foreign country, cannot sue, 50.
 - although a consul, if he trade, 50.

NEW DEFENCE,

- infant, when entitled to make, 173–175.
 - (See INFANT.)
- married woman, when entitled to make, 188.

NEW SOUTH WALES,

- receiver of property in, when appointed, 1731.

NEWSPAPERS,

- libel or slander in, discovery must be given, for purposes of action, 566.
- receiver and manager for, when appointed, 1727 n.

NEW TRIAL,

- bill for, 1625 n.

NEW TRIAL OF ISSUE OR QUESTION OF FACT, 1120–1139.

- appeal from order on application for, 1139
- application for, made in Chancery, 1185; to what judge, 1186.
 - costs of, 1139.
 - bar, after trial at, 1112.
 - enrolment of further decree or order, not barred by, 1136.
 - evidence on application, 1131–1133, 1136, 1137.
 - power of Court, on, 1120.
 - time for, and how made, 1136.

[The references are to the star paging.]

NEW TRIAL OF ISSUE OF QUESTION OF FACT — *continued.*

- Chancery, grounds for directing in, 1120–1129.
 - absence of material witness, 1123.
 - bar, after trial at, 1112.
 - evidence, on ground of improper rejection of, 1124.
 - new, on ground of, 1121, 1122.
 - forgery, 1122, 1123.
 - fraud, 1122.
 - irregularity in trial, 1124.
 - land, when matter relates to, 1124.
 - misconduct of jury, 1128.
 - misdirection of judge, 1123; costs of first trial, 1149.
 - perjury, conviction of witness for, 1122.
 - surprise, 1122; case to be made on application, 1122.
 - three trials, after, 1125.
 - weight of evidence, verdict against, 1121.
- Common Law, grounds for, at, 1125–1185.
 - absence of counsel or attorney, 1131.
 - begin, allowing wrong party to, 1128.
 - damages, excessive, 1129; too small, 1130.
 - default of opposite party, of, 1131.
 - evidence, improper admission or rejection of, 1125.
 - objection must be taken at trial, 1127.
 - new, 1134.
 - jury, default or misconduct of, 1128, 1130.
 - costs of first trial, 1188, 1149.
 - improper discharge of, 1127.
 - improper influence of, 1182.
 - interest of, 1128.
 - misconduct of opposite party, 1182; costs, 1188.
 - misdirection of judge, 1126; objection, when to be taken, 1127, costs, 1188.
 - mistake of judge, 1125; objection, when to be taken, 1127; costs, 1138.
 - officer of court, default or misconduct of, 1128.
 - postpone trial, on refusal to, 1128.
 - second or third, when granted, 1185.
 - several issues, when granted as to one of, 1134.
 - surprise of, 1133; caused by fraud of opposite party, 1181, 1182.
 - costs, 1138.
 - verdict, perverse or against evidence, 1129.
 - witness, non-attendance or misconduct of, 1132.
 - mistake or perjury of 1132.
 - stopped examination of, 1134; terms on which granted, 1134.
 - costs of, 1137, 1139, 1149.
 - dead witness, depositions and evidence of, read at, 1118.
 - death of plaintiff, when not directed on ground of, 1128.
 - evidence upon application for, 1136; affidavits, when receivable, 1137.
 - further hearing, when directed at, 1146.
 - issue or question, form of, not changed on application for, 1139.
 - ordered, although order made after trial enrolled, 1136.
 - powers of court at application for, 1120.
 - principles on which court acts in directing, 1120.
 - surprise, 1122 n. (a).
 - terms on which granted in Chancery, 1187; at Law, 1137, 1139.
 - verdict, previous, need not be set aside, 1139.
- NEXT FRIEND (OF INFANT),**
 - address and description of, statement of, in bill, 359; in amended bill, 402 n.
 - omission of, how taken advantage of, 359 n.
 - amend bill, must join in affidavit in support of application to, 415.
 - amendment by adding, when permitted, 68.
 - any person may be, 68, 69 and n.
 - application or bill on behalf of infant must be by, 68 and n., 77.
 - attainment of majority by infant, should not prosecute suit after, 78.
 - authority from, must be filed with bill, 69, 307.
 - conduct of cause, responsible for, 76.
 - consent to act, on appointment of new, 78.
 - consequence of not naming, 68.
 - costs of, 68 n., 75 n., 78–82. (*See Costs.*)
 - costs, liability for, 87 n., 78.
 - costs, charges, and expenses of, a just allowance, 1233.

[The references are to the star paging.]

NEXT FRIEND (OF INFANT) — continued.

- death of, proceedings on, 77.
- defendant cannot be, 69 n.
- discovery from, 68 n., 178 n.
- inquiry whether suit of, beneficial for infant, 70, 79.
or as to fitness of next friend, 71.
- not granted on application of next friend in his own suit, 72, 80.
- iien of solicitor of, 81, 1842.
- motion on behalf of infant, made by, 78, 1595.
- new, appointment of, 77.
consent to act, and fitness must be shown, 77, 78.
entry and service of order, 77.
fitness of, must be proved, 71.
- outlaw in civil action, may be, 74.
- pauper may be, 37, 75.
- petition on behalf of infant, presented by, 1604.
- production of documents, defendant cannot require from, 1824.
- receiver in cause cannot be, 75, 1732.
- removal of, for misconduct, 74, 75; or because adversely interested, 75.
- retirement of, must give security for costs on, 76.
- sanction of court to consent by, to deviation from course of procedure, 74.
- solicitor of, when he should not also act for defendants, 75.
- son of, not appointed receiver in the cause, 1732.
- substance, need not be person of, 74.
- undertaking as to damages, how given by, on application for *ne exeat*, 1708.
- witness in the suit, may be a, 76.

NEXT FRIEND (OF MARRIED WOMAN).

- address and description of, statement of, in bill, 359; amended bill, 402 n.; omission of, how taken advantage of, 359 n.
- appeal must be by, when she is a defendant, 187.
- application or bill on behalf of married woman must be by, 109.
although validity of marriage contested, 110 n.
unless a pauper, 39, 111.
- application must be by, when she is a defendant, 110 notes.
- authority from, must be filed with bill, 111, 307.
- bankruptcy of, proceedings on, 112
- change of, proceedings on, 111, 112.
- consent to act of new next friend, 112.
- costs, liability for, 110 n.
- death of, proceedings on, 112.
when plaintiff neglects to apply for appointment of new, 112.
- defendant cannot be, 110 n.
- description and address of statement of, in bill, 359; amended bill, 402 n.
omission of, how taken advantage of, 359 n.
- husband must not be, in suit for wife's separate estate, 109.
- Infant Custody Act, not necessary on application under, 1862, 1863.
- liability of, when name used without his knowledge, 110 n.
- motion on behalf of married woman, made by, 109, 1596.
- neglect to name, on making motion, effect of, 110 n.
- new, appointment of, 112, 113; consent to act of, 112.
entry and service of order, 112.
- petition on behalf of married woman, presented by, 110, 1604.
- production of documents, defendant cannot require, from, 1824, 1825.
- relation, need not be a, 111.
- retirement of, proceedings on, 112.
- sanction of court to consent by, to deviation from course of procedure, 68 n., 86, 112
- security for costs, when required from, 111, 112, 113.
on retirement, 112; on residence out of the jurisdiction, 118.
- separate estate of married woman, suit for must be by, 109.
- substance, person of, must be, 37, 111.
- necessary, where, 68 n., 109 and notes, 110 notes.
- who may act as, 110 n.
where she has a protection order, 110 n.

NEXT FRIEND (OF PERSON OF UNSOUND MIND).

- application, or bill on behalf of must be by, 9, 82, 83, 86.
- authority from, filed with bill, 86 n.
- costs, liability for, where plaintiff falsely alleged to be imbecile, 86.
- description and address of, statement of, in bill, 359; amended bill, 402 n.
omission of, how taken advantage of, 359 n.

[The references are to the star paging.]

NEXT FRIEND (OF PERSON OF UNSOUND MIND) — *continued*.

- discovery from, 178 n.
- motion on behalf of person of unsound mind, made by, 1596.
- new, appointment of, 85 n.
- omission to name, effect of, 86.
- petition on behalf of person of unsound mind, presented by, 1604.
- position of, 86 n.
- production of documents, cannot be required from, 1824, 1825.
- sanction of court to consent by, to deviation from course of procedure, 86.

NEXT FRIEND (FOR PURPOSES OF THE APPLICATION),

- necessary, when, 68 n., 78, 1595.
- costs where not named, 1595.
- petition, necessary on, when, 1595.

NEXT OF KIN,

- administration decree on application of, others not being parties, 433.
but they must be served with notice of it, 217, 225, 288, 433.
- advertisement as to, when issued, 1214.
- bill by next of kin and heir, for account of real and personal estate, multifarious, 344, 345.
- claims by, 1203–1209.
- (See **CLAIMS UNDER DECREE.**)
- class-suit, on behalf of, when permitted, 238.
- costs of, 1424, 1427; coming in under decree, 437, 1212, 1218, 1428.
- costs of suit by, 1497; when residue exhausted, 1424.
- death of one, a co-plaintiff, revivor on, 1527.
- inquiry as to, when directed, 990.
need not be preliminary to taking accounts, 991.
- married woman's interest as next of kin, husband's power to release, 122, 123.
- none, Attorney-General made a party in case of, 185 n.
- one may sue on behalf of himself and others, when, 238.
- parties in suits by, 217.
- presumptive, cannot sue, 316.

NISI PRIUS (TRIAL OF QUESTION OF FACT AT). (See ISSUE.)

NON EST INVENTUS (RETURN OF),

- messenger, by, proceedings upon, 490.
- pro confesso*, taking bill under general orders, after, 496.
- sergeant-at-arms, by, proceedings on, in case of contempt for not answering, 495.
for non-obedience to decree or order, 1049.
- sheriff, by, to attachment, 471; may be followed by other attachments, 471.
attachment for want of answer, to, proceedings upon, 494–496.
appearance, for want of, 472; not followed by further process, 472.
non-obedience to decree or order, for, proceedings on, 1048.
non-payment of costs, for, proceedings on, 1445.

NON-ACCESS,

- proof of, 564 n.

NOTARY PUBLIC,

- affidavit sworn before, out of the jurisdiction, when received, 892.
official character, of, how proved, 892.
- answer, when taken before, 744.
- proof of, when dispensed with, 892 n.

NOTES,

- judge's, of evidence, 912, 1138, 1187, 1488.
(See **JUDGE'S NOTES.**)
- witness, when allowed to use, 1099, 1100.

NOTICE,

- abatement of cause of, 977.
- adjudication in bankruptcy, to dispute, 65.
- admit documents, to, 849, 880.
- affidavit, of filing, 899; when in support of claim, 899, 1209.
enlargement of time to answer, on application for, 740, 741.
- issue joined, when filed before, 889.
- motions on, 899, 1598.
- motion for decree, on, 821.
- petitions, on, 899, 1607.
- agent, to, notice to principal, 674, 675.

[The references are to the star paging.]

NOTICE — continued.

- answer, of filing, 755 ; omission of, consequence of, 755.
 - answer as an affidavit of reading, on motion for decree, 724 ; effect of, 822.
 - appeal to House of Lords, of, 1498 ; indorsement of, on petition, 1493.
 - appearance, of entry of, 537.
 - decree, when appearance entered after, 153.
 - not necessary where entered by plaintiff, 462.
 - attorn to receiver to, 1742.
 - carrying in bill of costs for taxation in case parties differ, of, 1477.
 - charge of, met by negative averment in plea, 614.
 - charge of, what facts provable under general, 864.
 - fact only put in issue, not materials of proof, 855.
 - creditor to, of check being ready, 1806.
 - cross-examination, of, 915.
 - cross-examination, to produce witness for, 890.
 - issue joined, in cases of, 913.
 - motion for decree, in case of, 914.
 - dealing with purchase-money of, 1372.
 - demurrer, of filing of, 592 ; effect of neglect to give, 593.
 - denial of, by answer and averments in support of plea of purchase for valuable consideration, without notice, 677-679.
 - distringas, of, 1692, 1693 ; of application to transfer notwithstanding, 1692, 1693.
 - enlargement of time for filing affidavits, when cause heard on motion for decree, of, to record and writ clerk, 822.
 - ex parte* examination of witness, of, 901.
 - examination and cross-examination of witness, 915.
 - examination *de bene esse*, 938 ; contents of, and time for giving, 938.
 - examination of time appointed for, service of, on witness, 906, 907.
 - examination of defendant, after third insufficient answer, of filing, 772, 778.
 - exceptions for insufficiency, of filing, 765.
 - consequence of neglect in giving, 765.
 - of setting down, 768.
 - amendment of, 770.
 - old exceptions in case of, insufficient further answer, 770.
 - exceptions for scandal, of filing, 352 ; consequences of neglect to give, 852.
 - of setting down, 353 ; consequences of neglect to give, 853.
 - execution of commission to take answer, of, 750.
 - further consideration, of setting down cause on, 1371.
 - summons, suit, in, 1372.
 - injunction, of, 1673, 1684.
 - inquiry as to, when directed, 854.
 - inquiry, of execution of writ of, 1141.
 - motion, of, 1592-1596.
- (See Motions.)
- motion for decree, of, 819, 820.
- (See Motion for Decree.)
- new solicitor, of naming, 1849.
 - onus of proof, of, 698, 850.
 - pauper, on behalf of, must be signed by his solicitor, 41.
 - petition, of restoration of, for further hearing, 1609.
 - pleading, 824 n.
 - plea, of filing, 689 ; effect of neglect to give, 690.
 - probate or stamped copy of will, to read, 877.
 - produce, to, 878, 1076.
- (See Notice to Produce.)
- prosecute *caveat* against enrolment, to, 1025.
 - replication, filing of, 831 ; form of, 831, 882.
 - advertisement, of, 882.
 - neglect to give, effect of, 831.
 - service of, how effected, 832 ; when substituted, 832.
 - jurisdiction, out of the, 882.
 - revive, of defendant's intention to, 1589, 1540.
 - service of, how effected, when personal service not required, 455, 456.
 - on defendant not appearing in due time, 456
 - on person not a party, 456.
 - short cause, of marking cause as, 972 ; service thereof, 972 and n.
 - further consideration, when heard on, 1371.
 - surcharge, of, in taking accounts before the Master, 1225.
 - validity of devise, to dispute, 877.

[The references are to the star paging.]

NOTICE TO PRODUCE,

Master's office, documents at, 1177.

secondary evidence, in order to let in, 878.

NOTICE OF THE DECREE (PROCEEDINGS BY SERVICE OF), 482-488.

adding to decree, on application of persons served with, 486, 487.

time for application, 486.

appeal by person served with, 488, 1480.

appearance by party served, entry of, unnecessary, 487, 538.

applicable, when, 217, 225, 488; improper in other cases, 483 n.

copy of decree, duly indorsed, served instead of notice, 486.

costs of persons served, 483 n., 487.

decree, how far it may be prosecuted before service of the notice, 485.

entry of memorandum of service, 486.

certificate of, 486; copy for Chambers of, 487.

fee on, 486 n.

direction for, how obtained, where service irregular, 485, 486.

evidence of service, order for leave to attend when sufficient, 487.

stage of proceedings at which required, 486.

guardian *ad litem*, for infant or person of unsound mind served with, how appointed, 437.

infant, order for service necessary, 488.

application for order, how made, and evidence, 484.

service, how effected, 484.

jurisdiction, on person out of, order for service on, necessary, 484.

application for it, how made, and necessary evidence, 484, 485.

leave to attend proceedings, order for, service of, 486, 487.

copy of order for Chambers, 487.

memorandum indorsed on, 486.

persons made parties by, 190-192, 216, 217, 482, 488.

review, bill in the nature of, filed, by whom, 488, 1581.

revivor by person served with, 1539, 1540.

service, how effected, 483, 484, 485.

(See SERVICE.)

unsound mind, person of, order for service necessary, 488.

application for order, how made, and evidence, 484.

service, how effected, 484, 485.

NOXIOUS VAPOR,

emission of, when restrained, 1635 n.

NUISANCE,

expert, when appointed in case of, 1687 n.

information against, 10 n.

inspection, in cases of, 1687 n.

jurisdiction of equity, in case of, origin and extent, 1685 n.

parties, 303 n.

private, injunction when granted in case of, 1687.

bankrupt, when entitled to restrain, 58.

public, injunction against, at suit of Attorney-General, 1686.

of private person, 1686, 1687.

what is a nuisance, which the court will restrain, and how ascertained, 1685 n.

the real question is one of fact, 1685 n.

interference with ordinary comfort, &c., 1685 n.

that which diminishes the value of property, and the enjoyment of it, 1685 n.

disturbance of rest, 1685 n.

burning bricks, holding a regatta, 1685 n.

opening and leaving open sewers, 1685 n.

continuous dense smoke, laden with cinders, 1685 n.

offensive odors, 1685 n.

each case depends on its own circumstances, 1685 n.

acquiescence, effect of, 1685 n.

particular injury to plaintiff, 1686 n.

railway, to owner of lots on street, 1686 n.

house of prostitution to owner of adjoining house, 1686 n.

that which operates to destroy health, 1686 n.

storing of inflammable materials, 1685 n.

trespass, 1688 n. (a).

fête, drawing together crowds of idle and improper persons, 1685 n.

circus, causing intolerable noise, 1685 n.

[The references are to the star paging.]

NUISANCE — continued.

bell-ringing, 1685 n.
blocking up right of way, &c., 1689 notes.

NUN,

status of, 45 n., 87 n.

NUNC PRO TUNC,

decree or order, entry of, order for, how obtained, 1016; when made, 1017.
enrolment of decree or order, abolished, 1020 n.
enrolment of receiver's recognizances, order for, 1739, 1740.
exceptions, filing, prohibited, 765, 766.
replication, filing; at hearing, 983.

OATH,

administration of, to be reverent, 748, 891 n., 898.
by whom, 749 n., 892 notes (a) and (b).
answer put in on, unless dispensed with by order, 784, 785, 787 n.
omission of, must be expressly waived, 785.
answer of Attorney-General put in without, 139, 735.
Secretary of State for India, of, put in without, 735.
averment of identity, in plea, not rendered necessary by, 687.
chief clerk, administration of, by, 1328.
demurrer put in without, 590.
demurrer by witness must be upon, 944.
disclaimer, put in upon, unless dispensed with by order, 708.
fee on administration of, 1441 n.
plea put in upon, 686, 688.
unless of matter of record, 686, 687.
or of quasi record in the court itself, 688, 687, 688.
or dispensed with by order, 689.
omission of, cannot be waived, 688.

OATH OR SIGNATURE,

answer, put in without, by order, 786, 787, 755.
guardian *ad litem*, when put in by, 753, 754.
order, how obtained, 786.
plea, put in without, by order, 689; order, how obtained, 689.

OBJECTIONS,

certificate of taxation, to, 1449.
discovery, to, which may be taken by answer, 716.
title, to, on sales by court, 1275.
to Master's draft report, 1302.

(See REPORT.)

form of, 1302.
foundation of exceptions to, 1302 n.
left by persons not parties, 1308.
time for bringing in, 1308.
warrants and proceeding on, 1308.
to draft, conveyance before Master, 1261.
time for, 1261.
statement of, 1261.

OBJECTIONS FOR WANT OF PARTIES, 286–295, 558.

answer by, 290.
demurrer by, 287–289, 558, 559 n.; form of, 287, 288, 586.
discovery, do not lie to bill of, 290.
hearing, at, 291, 292, 984; costs in such case, 291, 984.
plea by, 290, 638, 681, 682.
taken, comparatively, rarely now, 290 n.; how, 286, 292; when and by whom, 293.
reasons, 290 n.

OBLIGEE OF BOND,

when necessary party, 199; statements of bill by, 822.

OBLIGORS OF BOND,

bond to secure costs, effect of death or bankruptcy of, 84.
necessary parties, 270–272; unless insolvent, 270; or very numerous, 272.

OBSERVATIONS,

costs of, 1440 n.; in brief on demurrer, 595 n.

OCCUPATION RENT,

receivership, in case of, party when charged with, 1748.
tenant, when charged with, 1748.

[The references are to the star pages.]

OFFER,

account, to, sufficient to prevent the bar of the statute of limitations, 646.
 balance of account, to pay, not necessary now, 385.
 equity, to do, when required, 385, 386.
 demurrer, for want of, 385, 386, 562, 587.
 when it entitles defendant to decree without cross-bill, 385.
 withdrawn, cannot be, 387.
 forfeiture or penalty, to waive, 386, 562, 583.
 indemnify, to, when necessary, 385, 386.
 interpleader bill, in, 1568.
 redeem by mortgagor, to, when necessary, 214, 386; by mortgagee, 214.
 restoration, how pleaded, 385 and n.
 set aside securities, in bills to, 386.
 specific performance, in bill for, 385.

OFFICE,

fees of, necessary parties to suit to establish right to, 210.
 profits of, receiver appointed of, 1780.

OFFICE COPY,

affidavit of, 898, 899.
 accompanying bill, not necessary, 396.
 expedition copy, how made, 899.
 injunction, must be in court, on application for, 1009.
 minutes, left on bespeaking, 1010, 1011.
 obtained, how, 901.
 production of, by party taking, 899, 900.
 record and writ clerks' office, made at, 901.
 taken, by whom, 899; claim, when in support of, 899.
 amendment of, after expunction of scandal from original, 354.
 answer, official printed copy of, 756-758.
 acceptance of answer, taking when not an, 506 n., 509, 784 n.
 alterations or interlineations in, 757.
 amendment of, 783.
 authenticated, how, 757.
 charges for, 757.
 co-defendant, when entitled to, 757.
 contempt, taking, when not a waiver of, 506 n., 509.
 fee on certifying, 757.
 irregularity in jurat not waived by taking, 748.
 number of copies co-defendant and plaintiff entitled to, 757.
 obtained, how, 757.
 time at which to be ready, 757.
 answer, of schedules to, 755, 757; costs, where printed, 757.
 attachment, of writ of, 1047 n.
 certificate, of, Accountant-General's, 1785; fees on, 1786 n.
 investment in stock or securities, of, 1792.
 payment or transfer into court, of, 1787.
 transfer or delivery out of court, of, 1785.
 certificate of taxation, of, 1447.
 decree or order, registrar's, 1017; fees of, 1017 n.; operated on by Accountant-General, 1783 n.
 report office, 871 n., 1018; fees for, 1018 n.
 costs of, not allowed, if unsigned, 1018.
 operated on by Accountant-General, when, 1783 n.
 signature of record and writ clerk, to, 871 n., 1018.
 demurrer, of, 593.
 demurrer and answer, taking, not a waiver of irregularity, 592.
 demurrer by witness, by whom taken, 944.
 depositions of, 871, 910.
 de bene esse, when made, 938 n.
 disclaimer, of, 708.
 evidence, of, in suit to perpetuate testimony, 1574.
 examination of witness on interrogatories, of, 1188-1187.
 examiner's certificate of default or misconduct of witness, of, 908.
 exceptions of, for insufficiency, 765; for scandal, 352.
 hearing, must be in court at, 981.
 lower scale, of certificate for, 1444.
 opinion of foreign court, of, 1145.
 partition, of commission and certificate of, 1159.

[The references are to the star paging.]

OFFICE COPY—continued.

- petition of appeal and rehearing, of, how obtained, 1483.
- charges for, 1483 n.
- plea, of, 691.
- proceedings in the court, read from, 688, 871.
- receiver's recognizance of, left on bespeaking minutes of order vacating, 1012.
- record, office copy of a, provable as exhibit at hearing, 882.
- schedule to answer, how obtained, 758.
- scheme for charity, of, 1857.
- signature to, 688, 867, 871, 1018; omission of, how remedied, 871, 872.

OFFICER,

- corporation, of, made defendant for purpose of discovery, 143, 144, 145 n., 296, 322, 378; answer of, not read against corporation, 842 n.
- Crown, entry of appearance for, by plaintiff, 462.
- foreign state, of, made defendant for purpose of discovery, 141 n.
- military or naval, not required to give security for costs, 28.
- ministerial, when to be made a party, and when not, 296 n.

OFFICER (OF THE COURT OF CHANCERY),

- appearance of, sequestration in default of, how obtained, 474.
- arrest, protected from, when, 1069.
- privileges of, judicially noticed, 546.

OFFICER OF COURT OF COMPETENT JURISDICTION,
plea that defendant is, 628, 629.

OFFICER OF FOREIGN GOVERNMENT,
need not be co-plaintiff with foreign government, 19 n.

OFFICIAL LIQUIDATOR,
suits by, 26 n.

OFFICIAL MANAGER,
suits by, 26 n.

OFFICIAL REFEREES,
duties of, 1168 n. (a).

OMISSION,
answer, in, when remedied by supplemental answer, 779, 780.

ONUS PROBANDI, 849–852.

- affirmative, rests on party asserting, 850 and n., 851 and notes.
- double legacies, in case of, 851 and n.
- impeachment of instrument, in case of, 850, 851.
- legitimacy, in case of, 851.
- presumption of law, rests on party impugning, 850.
- prima facie*, case being made, lies on opposite party, 850.
- purchase for valuable consideration without notice, in case of defence of, 850.
- sanity, on questions of, 851 and notes.
- undue influence, in case of, 850, 852.
- voluntary donation, in case of impeached, 852.

OPENING BIDDINGS. (See BIDDINGS, OPENING.)

OPINION OF COUNSEL. (See COUNSEL.)

ORAL TESTIMONY,

- in United States courts, 905 n.
- in Massachusetts, 887 n.
- how reported, 912 n.
- in Wisconsin, 887 n.

ORDER,

- conditional, consequences of non-performance of the condition, 742.
- foreign or colonial court, of, how proved, 868.

(See DECREES AND ORDERS.)

- of reference, basis of Master's authority, 2193 n.

to take account, what it should specify, 1221 n., 1231, 1232 in note.

common, of revivor, 1510 n., 1524 and n.

application for, by motion, 1510 n.

no evidence required, 1510 n.

discharged, when and how, 1510 n.

in what cases obtained, 1524, 1525.

in real estate suits, 1525.

on whose application, 1525.

may be made after lapse of long period of time, 1526.

[The references are to the star paging.]

ORDER NISI,

absolute, made on *ex parte* motion, 1593; evidence in support, 1593.

ORDERS OF COURSE, 1589-1591.

amendment of, not permitted after service, 1590.

application to alter, discharge, or reverse, to whom made, 1474.

definition of, 1589.

discharge of, for irregularity, 1590.

application for, how made and to whom, 1590.

made without delay, should be, 1590.

drawn up, how, when made on motion, 1592.

when on petition to Lord Chancellor, 1605 n.

to Master of the Rolls, 1606.

enforced, how, 1591.

ex parte, made, 1590.

judge, may be made by any, 1589.

marking with name of, 1586.

Rolls, Master of the, usually made on petition to, 1589.

service of, effected, how, 1590; necessity for, 1590.

ORE TENUS.

demurrer, definition of, 588.

confined to case where demurrer already on record, 588.

cannot be on same ground, 588.

must be co-extensive with it, 589.

costs of, 599; when leave to amend given, 599.

plea overruled, not allowed after, 702.

ORIGINAL BILL. (See BILL, ORIGINAL.)

ORNAMENTAL TIMBER,

cutting down, by tenant for life, restrained, 1683.

OUTLAW,

Attorney-General necessary party to suit for property of, when, 8, 158.

autre droit, may sue in, 54.

defendant, when he may be, 158.

executor, may be, 249, 250; when not a necessary party, 249, 250.

meaning of term, 53.

next friend of infant may be, 74.

personal representative, not a necessary party to creditor's suit, 249.

OUTLAWRY,

Crown, property of outlaw vested in, 8.

disability arising from, in case of plaintiff, 45; of defendant, 180, 158.

dismissal of bill for want of prosecution, on plaintiff's outlawry, 810.

judgment of, effect of, for felony or treason, 54.

plea of, defendants, 158, 631; of plaintiff's, 630.

form of, 688; oath, put in without, 687.

OUTSTANDING PERSONAL ESTATE,

getting in, application for leave to proceed in, how made, 1843.

inquiry for, in decree for account of personality of deceased person, 1005.

receiver, how got in by, 1750.

OUTSTANDING TERMS,

certainty necessary in bills to prevent the setting up of, 371.

limitations, plea of statutes of, in bill to prevent setting up of, 639, 640.

plea of none, 605, 628.

setting up of, injunction to restrain, 1680; only granted at hearing, 1681.

OWELTRY,

partition, when awarded under commission of, 1156, 1157.

OWNERS,

class suit by one of several, for *modus*, when allowed, 239.

general allegation of property, 369 n.

inheritance, of, when necessary parties, 209, 262.

OXFORD (UNIVERSITY OF),

demurrer on the ground that court of, is the proper tribunal, 554.

office copy of record of court of, provable as exhibit at hearing, 882.

plea of privileges of, 628, 629.

record from library of, provable as exhibit at the hearing, 882.

GENERAL INDEX.

(The references are to the star pages.)

PAGAN,

answer of, how taken, 785, 786; form of commission to take, 750.

PAINS AND PENALTIES. (See PENALTY.)**PAIS,**

plea of matter in, 665-680. (See PLEA.)

PALATINE COUNTY. (See COUNTY PALATINE.)**PAPER,**

kind of, used for bills and other proceedings, 896.

affidavits, for, 895; depositions, for, 911.

PAPERS FOR USE OF COURT. (See COURT.)**PAPERS TO BE LEFT ON BESPEAKING DECREE, OR ORDER, 907-910.****PARAPHERNALIA,**

wife's specific legatees of, when necessary parties to bill relating to, 265.

PARCENERS,

limitations, statute of, inapplicable between, 644.

PARDON,

effect of, 57; of conditional, 58.

difference between pardon and reversal, 57.

PARENTS PATRIÆ,

information, on behalf of Sovereign as, &

PARISH,

class suit by one of the inhabitants of, when permitted, 289.

PARISHIONERS,

need not all be parties to suit by parson for tithes, 274.

parties to suit to enforce contract on behalf of, 272.

PARLIAMENT,

journals of, printed copies of, by authority, admitted without proof, 862.

judicial notice taken of place of holding, 546.

proceedings of, usual course of, 546.

prorogation of, time of, 546.

sessions of, time of, and time of holding, 546.

PARLIAMENT (MEMBER OF),

answer of, proceedings in default of, 496, 497.

appearance of, proceedings in default of, 473-475.

breach of injunction or restraining order by, remedy for, 1687.

decree or order, enforcing against, 1044, 1066.

indorsement on copy served, 1044.

discovery, bill of, proceedings to take, *pro confesso* against, 497, 539.

effect of order, 496, 531, 1559.

dwelling-house of, what is, for purpose of service of the bill, 443.

elegit or *fieri facias*, issue of writ of, against, 1066.

privilege of, does not extend to criminal contempts, 1069 notes.

pro confesso, proceedings to take bill against, 497, 522, 523.

process against, for non-appearance, 473-475.

answer, for want of, 496, 497.

costs, for non-payment of, 1454.

decree or order, for non-obedience to, 1044, 1066.

injunction, or restraining order, for breach of, 1687.

(See PRIVILEGED PERSON.)

receiver, objectionable as, 1733.

sequestration against, 473-475, 496, 1066, 1454, 1687.

PARLIAMENTARY POWERS,

excessive exercise of, restrained, 1650.

PAROL AGREEMENT,

specific performance of, on ground of part-performance, 847.

PAROL DEMURRER,

what it was, 164; now abolished, 165.

similar practice adopted in equity, 165.

(See DAY to SHOW CAUSE.)

[The references are to the star paging.]

PAROL VARIATION,
specific performance not decreed where proved, 880, 881.

PARSON,
parties to suits for tithes by, 274.
revivor of suit by, 23.
suit by, in right of parsonage, 23.

PART PAYMENT,
limitations, statute of, barred by, when, 647.
specific performance of parol agreement on the ground of, 847.

PART PERFORMANCE,
specific performance, in case of, 847, 861.

PARTIALITY,
plea of award by arbitrators charged with, 297, 671.

PARTICULARS OF SALE,
form and circulation of, 1269, 1270.
preparation of, on sale by court, 1269.
settlement of, 1289.
timber, on sale of, 1273, 1274.

PARTIES (TO CONVEYANCE),
on sale by court, 1279.

PARTIES (TO SUITS), 190-304.
how made, 390 n.
in double character, 190 n.
all persons interested, 190 and n.
confined to interest involved in issue, 190 n.
how far in discretion of court, 190 n.
when parties are numerous, 190 n.
when decree can be made without concluding interest of any person, 190 n.
rule of United States court in regard to stating reasons for omission of proper
parties, 190 n.
all persons having same interest should stand on same side of suit, 190 n.
but on refusal to be plaintiffs may be made defendants, 190 n.
made plaintiffs only with their consent, 190 n.
as to persons having conflicting interests, 190 n.
absence of, decree, when made in case of, 191.
absent, decree, when made without prejudice to rights of, 149, 150, 154.
when made saving rights of, 298.
on undertaking to give effect to rights of, 298.
waiver of relief against, 298.
account, in suits for, 216-219, 271.
accounting persons necessary, 215-217; unless accounted with, 218, unless
liability several, 271.
addition or alteration of, by amendment, 293-295, 308, 408-407, 409, 417.
(See AMENDMENT OF BILL.)

by intervention, 287.
by supplemental bill, 295, 1509, 1580; not by supplemental statement,
295, 1580.
administration suits, to, 200-205, 232 n., 235-237, 249-255.
administrators, all, necessary parties, 228, 249 n., 254 n., 283 n., 818 n.
agents, when made, 196, 298, 299, 322; when not, 195, 197, 269 n., 295, 296 n.
annuitant, when necessary, 214, 228; parties to suit by, 282.
appointees under will of married woman, 226.
where one may sue for self and others, 288.
arbitrators, when made, 297, 322.
ascertained sums, to suits for, 219.
assignee, 197 notes.
assignees of bankrupt, 224, 255.
assignee of mortgage, last only necessary party, 194.
of note secured by mortgage, 212 n.
assignor of *cause in action*, or his representative, 197 and n., 198-200 and n.
assignor of bond, or his representative, 199.
assignor of equitable interest, 206.
assignor of shares in unincorporated joint-stock company, 199.
assignor of judgment, 199.
Attorney-General in suits by Crown accountants, 188.
boundaries of colonies, to suit relating to, 136.
charities, in suits relating to, 187.

[The references are to the star paging.]

PARTIES (TO SUITS) — *continued.*

- in suits to establish claims against Crown estates, 133.
- testimony, to suit to perpetuate, 135 n., 1572
- where title in Crown appears on the record, though no claim made, 186.
- when Crown interested as *parens patriæ*, 137.
- when made a party, 7, 8, 129, 184–138, 156, 1572.
- when rights of Crown incidentally interested, 185.
- will, in suit to establish, 282.
- distinct Crown grants, to suits by persons claiming under, 136.
- heir or next of kin, where no, 135 n., 283.
- attorneys, when made, 298, 299, 322.
- auctioneers, when made, 195, 196 n.
- bankrupt not made, 215, 255, 296; unless fraud or collusion charged, 255.
- mortgagor, not a necessary party to suit to foreclose, 215.
- Bank of England, when a, 145 n.; when not, 147, 1688.
- beneficiaries, 238 n., 255 n.
- bills of exchange, to suits relating to, 207.
- bishop, in suit against sequestrator, 208.
- in suit by incumbent for tithes, 208.
- boundaries, to suits to ascertain or settle, 209, 262.
- broker, not a necessary, 247.
- cestui que trust*, 215 n., 221–224, 222 notes, 226, 256 n., 257
- in foreclosure suits, 257.
- in redemption suits, 259.
- in suits by executors, not necessary, 254.
- in suits by trustees, 220 and n., 221–223; against trustees, 256–259.
- charities, to suits relating to, 261, 276.
- class, when trustee sues on behalf of, 221.
- collateral, where interest of *cestui que trust*, 223, 224.
- charges, to suits to establish, or foreclose, 214, 264, 278–280.
- charities, in suits relating to, 261, 276.
- class, to suit by or against one of a, 191, 235–245, 272, 273.

(See **Class.**)

- number interested in real estate necessary to justify representation of all
 - by few, 237 n., 242 n.
 - where all should join, 237 n., 242 n., 272 n.
 - plaintiffs having sued for themselves and others, whether power to
 - discontinue, 244 n.
 - none after decree, 244.
 - co-executor, when not a necessary party, 271.
 - committees of lunatics, 249.
 - common rights of, to suit relating to, 209, 210, 239, 274.
 - company unregistered, to suit on behalf of, 238
 - concurrent interests with plaintiff, persons having, 190–245.
 - contractor, 196 n.
 - contribution, to suits for, 270–272, 270 n., 276 n.
 - co-obligors, or co-surety in suits for contribution, 270; where numerous, 272.
 - copy of the bill, persons, when bound by service of, 190–192, 428–432.
- (See **COPY OF THE BILL.**)
- copyholds, lord, when necessary party to bill relating to, 263.
 - corporations, 26 n
 - members or officers of, when made, 148–145, 296, 322, 378.
 - co-trustee, when not a necessary party, 272.
 - covenantee, in specific performance suit, 194.
 - creditor, when a necessary party, 200, 224, 257, 276, 324.
 - when one may sue on behalf of himself and others, 235, 287.
 - creditor's bill, to reach property of debtor that cannot be attached in
 - Massachusetts may be brought by one creditor alone, 235 n.
 - against a corporation and its debtors, 274 n.
 - crew of ship, to suit in behalf of, 289.
 - custom, suit to establish, 262.
 - debtor of deceased person, to suit by person interested against, 200.
 - depositee of deeds, when not a necessary, 206.
 - derivative mortgagees in foreclosure suits, 194, 261.
 - devisee of mortgagee in forclosure suit by personal representative, 193, 194, 215, 216.
 - devisees necessary, to a bill to set aside a will, and exec
 - utor, 233 n.
 - not liable jointly with heir for debt of deceased, 233 n.

[The references are to the star paging.]

PARTIES (TO SUITS) — *continued.*

- of purchaser, in specific performance suit, 285.
discovery, to bill of, in aid of proceedings in another court, 1557, 1558.
distribution of fund under decree, to suit by claimant after, 1206, 1207.
drawer or prior indorsee, of bill of exchange, 207.
duties, to suit to established right to, 274.
ejectment, against tenant, to action to restrain, 209.
equity, persons having right to sue in, 207.
escheat, person claiming by, in suit to establish will, 233.
execution, to suit to carry decree into, 1585.
executors, all who have proved, 226, 227 and n., 249 n., 252, 254 n., 318 n.
 acting, necessary parties after release and disclaimer, 252.
 durante minoritate, necessary parties unless he has fully accounted, 250.
 foreign, who have received assets abroad, 250 n.
 renouncing, not necessary parties, though holding power of sale, 253.
 residing abroad, 201 n.
executory devise, in case of, 228, 266.
fees of office, to suit for, 210.
fictitious name, 857 n.
foreclosure suits, to, 212, 214, 215, 221, 257, 259 n., 264, 277, 278, 279, 280, 283.
 (See FORECLOSURE SUIT.)
foreign executor, 250 n.
fraudulent grantor, in suit to set aside deed void as to creditors, 256 n.
general rule as to, 190–192.
heir, in administration suit by co-heir, 218.
heir, in suit by creditor, 249, n., 281, 282.
heir, in suit to execute trusts of deed for payment of debts, 232.
heir, in suit to establish will, 232.
 not where only to execute trusts, 281, 282.
heir of grantor, in charity informations, 261.
heir of mortgagee, when, 193, 218, 221 ; when not, 193, 194, 216.
heir of purchaser, in specific performance suit, 285.
husband and wife, 87, 108, 178, 179 n.
inconsistent titles, persons claiming under, 229.
 effect of joinder of, 238.
incumbrancers, prior, in redemption suit, 279, 280.
 not in foreclosure suit, 214, 279.
 surplus, in suit for execution of trusts of, 214.
incumbrancers, subsequent, in suits to foreclose or establish charges, 277.
 whether legal or equitable, 278 ; if specific, 279.
 not necessary in redemption suits, 279, 280.
 general rule as to incumbrancers, 194 n.
incumbrancers upon estate tail, 228.
indorsee of bill of exchange, 207.
infant, 68 n., 165 n.
 born *pendente lite*, 229, n.
inheritance, owner of, in suit to bind land, 262.
 custom or modus, in suit to establish, 209, 239, 262.
 specialty creditor, in suit by, 262.
 secus, where land not to be bound, 262.
inheritance, owners of first estate of, and of intermediate estates, 227, 228, 264,
 266 ; but not subsequent remainder-men, 265.
 unless first tenant in tail lunatic, 265.
 or nature of estate doubtful, 265.
interested persons, all, necessary parties, 190 n.
intermediate estates, persons entitled to, 228, 264.
 when contingent and unascertained, 229.
 esse, coming into, *pendente lite*, 229.
intervention, 287.
joint debtor, when not necessary party, 150.
joint factor, when not necessary party, 271.
joint legacy, to suit for, 211.
joint proprietors of trading undertaking, to suits on behalf of, 238.
joint-stock companies, to suits against, 272, 273 n., 274, 275.
joint tenants, 208, of a legacy or mortgage money, 211.
jointly liable to plaintiff, persons, 269.
jointly and severally liable to plaintiff, persons, 267–269.
judgment creditors, 278, 279.
jurisdiction, persons out of, 190 n., 246 n., 270 n., 272 n.

[The references are to the star paging.]

PARTIES (TO SUITS) — *continued.*

- when necessary, 152.
- not considered defendants, till served, 154.
- service upon, usually necessary, 154.
- land, to suits for, 263.
- law, person having right to sue at, 192.
- Law, to suit where jurisdiction withdrawn from Court of, 210, 262.
- legal estate, persons having, 192-194.
- legal estate, to suit for conveyance of, 220.
- legatees, when legacies are charged on real estate, 225.
- legatees, not necessary parties in suits to charge or recover personal estate, 228 n., 255.
- legatees, where one may sue on behalf of others, 228.
 - except in cases of ademption, 255 n.
- legatees, specific, of wife's paraphernalia, when made parties, 255.
- lessees, 209, 268.
 - lessor against assignee, in suit by, 206.
 - partition suit, in, 268.
 - tenant in common, of, 208.
- lessor of tithes not necessary party to bill by lessee under deed, 210.
 - secus, if by parol, 199, 210.
- lessee against assignee, in suit by, 206.
- license to assign lease, to suit for, 278.
- licensee, 197 n.
 - lien for unpaid purchase-money, to suits to establish, 278.
 - lord of manor, 263.
 - lords of manors, to suits by, as to rights of common, 274.
 - lunatic, in suit on behalf of, 82, 175, 208.
 - marriage settlement, to suit to rectify, 109 n.
 - marshal assets, to suits to, 287.
 - modus, to suit to establish, 209, 289, 292.
 - monarchical States, 1881 n.
 - mortgage-money, all persons interested in, to foreclosure or redemption suit, 211, 212, 215, 258, 259 n.; unless interests sufficiently represented, 212, 259.
 - mortgagee, parties to suits by, seeking relief as general creditor, 288, 284.
 - mortgagee, not a necessary party to bill by assignee, 215, 260 and notes.
 - unless to account for rents, 261.
 - original, in foreclosure suit by derivative mortgagees, 215.
 - who has assigned his interest since breach of condition may be included as defendant in bill to redeem, 215 n.
 - heirs of mortgagee cannot sustain foreclosure bill, 221 n.
 - mortgagee, claimants under, in redemption suit, 259, 260.
 - mortgagee, prior, not a necessary party to subsequent mortgagee's foreclosure suit, 214, 215.
 - mortgagor, in bill to redeem, may make parties of all persons who could call for redemption, 212 n.
 - or he may sue last mortgagee alone, 212 n.
 - a necessary party to a bill to foreclose, 214 n., 259 n.
 - deceased, devisee, heir, 214 n.
 - where he has conveyed his equity absolutely, assignee only, party, 214 n., 260 n.
 - in suit by second mortgagee to redeem, 218.
 - next of kin, 217 n., 218 n.
 - next of kin, when one may sue on behalf of others, 218 n., 288.
 - notice of the decree, persons when made parties by service of, 191, 192, 432, 433.
 - nuisance, 803 n.
 - numerous, 190 n.
 - nun, 87 n., 47 n.
 - objections for want of parties, 286-295, 558, 688, 681.
 - obligee in a bond or his representative, 199.
 - officer, when necessary party, 296 n.
 - outlaw, when a necessary party, 156.
 - parishioners, to suits on behalf of, 272.
 - parsons, to suits for tithes by, 274.
 - partition suits, to, 208 and n., 209 and n., 268.
 - partner, surviving, to creditor's suit against estate of deceased partner, 216 n., 269 n., 324.
 - partnership suits, to, 216.
 - allegations justifying suit by one partner for account against one only of three others, 216 n.
 - non-residents, 216 n.

[The references are to the star paging.]

PARTIES (TO SUITS) — continued.

- representatives of deceased partner, 216 n., 240 n., 282 n.
- heirs of, 216 n.
- partnership, to suits against, 254 n., 269.
- pawnee or depositor of chattel, to suits by, 228.
- peace, bills of, to establish right to duties, in case of, 274.
- pendente lite*, incumbrancer or purchaser generally not, 280 and n., 281, 1517.
 - unless conveyance of legal estate required, 280, 281, 1517.
 - made parties by supplemental proceedings, 280, 281, 1517.
- perpetuate testimony, to suit to, 1572.
- personal representatives, when necessary parties, 200, 205, 206, 240-255, 271, 282, 285, 318, 819.
 - accounting persons of, 208.
 - all usually necessary, 252.
 - administrator *durante absentia*, 252 n.
 - creditor of deceased person, to suit by, 262.
 - de son tort*, in suit against administrator or executor, 251, 819.
 - deceased, personal representative of, 252.
 - England, must be constituted in, 200, 250.
 - in suit against foreign representative, 250.
 - executor *durante minore aetate*, 250.
 - jurisdiction, on return within, to suit against limited administrator, 205.
 - husband of, 258.
 - legatee of deceased person, to suit by, 200.
 - mortgagee, of, in foreclosure suit by heir, 221; in redemption suit, 285.
 - mortgagor, of, to suit by mortgagee, as general creditor, 288.
 - partnership, suits in, 200.
 - personalty, to suits relating to, 200-205, 240-255.
 - principal or surety, of, to suit for contribution, 270.
 - purchaser, of, in suit for specific performance, 285.
 - reimbursement by personal estate, in case of right to, 283.
 - release of interest, after, 200.
 - specialty creditor, to suit by, for payment of his debt, 282.
 - widow, to suit by heir to compel election by, 282.
 - personal representatives, when not necessary parties, 200, 201, 249, 251, 288, 1722.
 - appropriation of fund, after, 250.
 - contempt, if in, 252.
 - distribution under decree, or after advertisement, in case of, 250.
 - heir, to suit against, for foreclosure, 283.
 - jurisdiction, if out of, 252 and n.
 - mortgagor's, in foreclosure suit against heir, 283.
 - outlawed, when, 249.
 - protection of estate, pending litigation, to bill for, 201 n., 1722 n.
 - real assets, to bill for discovery of, if representation contested, 283.
 - receiver, pending litigation in Probate Court, to suit for, 250, 251.
 - specific legacy, to suit for, after assent, 249.
 - personal representatives, when dispensed with as parties, 200, 202.
 - personal representative, general, when necessary party, 201.
 - administration *ad litem*, when sufficient, 201.
 - limited administration, when sufficient, 201.
 - bill filed before administration, asking account, 201 n.
 - personal representatives, to suits by, 224.
 - plaintiffs, joinder of, 208 n., 211 n., 216 n., 217 n., 243 n., 803, 884 n. (a).
 - pledgee plaintiff against stranger and pledgor, not open to demurrer, 223 n.
 - power vested in married woman, to suit relating to execution of, 109 n.
 - principal, in suits for contribution, 270.
 - process, prayer for, naming in, 890 n.
 - purchase, to suit to set aside, 279.
 - purchasers of different portions of estate from beneficiaries, where legal estate being outstanding, 219.
 - under decree, 1061 n.
 - quasi*, creditors proving under decree are, 635; purchasers under decree, 1061 n.
 - redemption suits, in, 212-215, 257 n., 280, 285.
 - (See REDEMPTION SUIT.)
 - remainder or reversion, persons entitled in, 227, 284.
 - boundaries, to suits to ascertain, 209.
 - partition suit, to, 208.
 - remedy over, persons against whom defendant has, 281-285.
 - as, person bound to reimburse principal defendant, 282.

[The references are to the star paging.]

PARTIES (TO SUITS) — *continued.*

- representation contested in Court of Probate, parties in case of, 283.
- representatives of parties, how far bound by *pro confesso* decree, 529.
- republican States, 1881 n.
- rescind contract, to suit to, 279.
- residuary devisees, 218.
- residuary legatees, 216 and n., 225.
 - not necessary parties in suits to charge or recover personal estate, 254.
 - except in cases of ademption, 255 n.
- resisting plaintiff's demands, persons interested in, immediately, 246–281 ; consequentially, 281–286.
- resulting trusts, person entitled to, 261.
- reversion, persons entitled in, 209, 227 ; in partition suit, 208, 209.
- review, to bills of, in nature of, 1578.
- right of way, to suit for establishment of, 210.
- sale of incumbered estates, to suit for, 214.
- set aside settlement, parties to suit to, 257.
- settled estates, in suits relating to, 264.
- sheriff, 295 n.
- Solicitor-General, when made, 140.
- solicitors, when made, 298.
- specialty creditors, to suits by, 282.
- specific assets of testator, persons possessing, when proper parties, 324.
- specific performance to suits for, 194, 196, 197, 220, 221, 230, 231 and n., 278, 279 and n., 285, 296.

(See **SPECIFIC PERFORMANCE.**)

- stockholder, suit against estate of deceased, 269 n.
- sub-contract, persons claiming under, 196, 278, 279.
- sub-purchaser, 196, 197, 278.
- sue, all persons having right to, at law, 192 ; or in equity, 207 ; or for whole or part, 208.
- supplemental bill, to, 1532, 1533 ; after interpleader decree, 1570, 1571.
- sureties, in suits for contribution, 270 and n.
- surplus, after payment of prior charges, in suits for, 214, 257.
- tenants in common, 208 ; of mortgage, 211.
- tenant in tail, first, in suits concerning land, 227, 264, 266.
- terre-tenants, when necessary parties, 276.
- third persons, 287, 822 n., 991 n., 1120 n. (b), 1614 n. (a).
- town, suit by inhabitants to restrain misapplication of money in violation of statute under which received, 192 n.
- trade, to suit to enforce covenant not to, 1654.
- trust, to suit for breach, of, 223, 224, 226, 247, 268, 271.
 - execution of, for, 205, 206, 226, 257, 258, 271, 433.
- trustee, when one may be sued without the others, 247, 248.
- trustee, to suit by, 221, 222, 223–226 ; against co-trustee, 223.
 - to recover fund improperly lent, 223, 224.
 - where trustee has assigned his trust absolutely, 247 n.
- trustees, 193, 205 ; whether trust expressed or implied, 193.
 - when dispensed with, 205.
 - if insolvent, 215 n.
- trustees having estates, or liable to unsuccessful defendant, 247.
 - assignee of trustee, 247 ; but not bare trustee, 247.
 - trustee under will, who has never acted, 247.
 - agent of trustee, 247.
 - when they represent parties beneficially interested, 222 n., 256 n.
 - not where they have adverse interests, 222 n.
- trustees, in foreclosure suits, 215, 257–259.
- trustees, for payment of debts or legacies, to suits by, 225, 226, 257, 279.
- uninterested persons, joinder of, effect of, as defendants, 295–301.
 - as plaintiffs, 301–304.
- unnecessary, how got rid of, 801.
- want of, objections for, 286–295 and notes, 559.

(See **OBJECTIONS FOR WANT OF PARTIES.**)

- waste, to suit to restrain, 208, 209, 227.
- wife, to a suit for forclosure of a mortgage of land in which she has an interest, 214 n.
- will contests, 255 n.
- witnesses, mere, should not be made parties, 296.

[The references are to the star paging.]

PARTITION,

- account, under general prayer, 1150 n. (a).
- advowson of, how effected, 1157.
- bath, of, how effected, 1157.
- certificate of, 1158-1161.
 - commission, annexed with documents to, 1159.
 - confirmation of, *nisi*, 1159; absolute, 1160.
 - filing of, 1159.
 - form of, 1159.
 - quashing, 1159, 1160; where double return, 1160.
 - separate, when made, 1159.
- chambers, how effected in, 1151, 1160.
- commission of, 1151-1157.
 - allotment of shares, 1158.
 - commissioners, how chosen, and number, 1152.
 - division of estates, how made, 1155, 1157.
 - execution of, 1155-1158.
 - infant, party, necessary, if there is, 1151 n.
 - inspection of estate, 1155.
 - preparation and issue of, 1152.
 - proceedings under, must be open, 1154, 1155.
 - production of documents, how enforced under, 1154.
 - return of, form of, 1155.
 - several issued, when, 1152.
 - stage of cause at which directed, 1151, 1152.
 - witnesses, attendance of, how enforced, 1153.
 - depositions of, how written and returned, 1154, 1159.
 - examination of, how taken, 1153.
 - conveyances, mutual, execution of, 1161.
 - settled by judge, when, 1161.
 - refusal to execute, 1162.
 - costs of, 730 n., 1162, 1163 n. (a); of lessee of share, 1163.
 - (See Costs.)
 - demand for, unnecessary, 1150 n. (a).
 - hearing, how effected at, 1151.
 - house, of, how effected, 1158, 1157.
 - infant, form of decree for, in case of, 78 and n., 168, 1150, n., 1162.
 - inquiry, when directed before issue of commission, 1152, 1153.
 - injurious, 1157 n. (a).
 - laches, effect, 1150 n. (a).
 - lien, commissioners have none on commission for their charges, 1163.
 - lunatic's share, dealt with under Trustee Acts, 1161, 1162.
 - manor of, how effected, 1157.
 - mill, of, how effected, 1157.
 - oweltiy, when awarded, 1158, 1157.
 - parties to suit for, 208, 209, 263.
 - joint-tenants, or tenants in common, 208, 209.
 - lessees, 208, 263.
 - prior incumbrances not necessary, 279.
 - remainder-men, 209.
 - reversioners, 209.
 - in suit by lessee of tenant in common, 208.
 - proceedings under decree for, 1150-1163.
 - rent payable for water-pipes, of, 1157.
 - receiver, 1150 n.
 - revivor, 1511 n. (a).
 - sale when ordered in place of, 1157 n. (a), 1159 n. (a), 1163 notes.
 - statement of case against defendant in bill for, 321.
 - title-deeds, custody of, 1162.
 - trustee, estate vested in single, when, 1161, 1162.
 - Trustee Act, 1850, provisions of, in cases of, 1161.
 - infants or lunatics interested, when, 78 and n., 168, 1162
 - petition for, in nature of bill in equity, 2027 n.
 - bill not sustainable for, in Massachusetts, 2027 n.

PARTNERS,

- all, and representatives of deceased, necessary parties to suit to establish demand against firm, 269.
- answer, or declaration of one read against others, 842.
- arbitration, reference to, by, 1249 n. (a).

[The references relate to the star paging.]

PARTNERS — continued.

- assignee of, suit by, 281 n.
- class-suit, when permitted on behalf of, 216 n., 288-248.
- corporate character, must not be assumed without authority, 23, 24.
- one, when permitted, may sue on behalf of self and others, 287-248.
- infant, Chancery may appoint person to carry on trade for, 2246 n.
- injunction, in case of, 2819 n.
- judgment against one, effect, 269 n.
- payment out, to whom made, in case of, 1808.
- personal representative of, creditor may sue, when, 821.
- plea, that plaintiff is not, 605, 619, 620.
- receivers, when appointed, 1782.
- revivor, 1511 n.
- substituted service on, 448 n.
- suit by one partner, without other partners, when permitted, 219.
- surviving, may sue debtors to partnership, 216, 217.
- surviving, when parties to suit by creditors or legatee, 824.
- surviving, necessary party to suit for partnership debt against executors of deceased partner, 269.

PARTNERSHIP,

- accounts of, bill to take, must pray dissolution of, 332, 333; parties to suits for, 200, 201, 216, 240, 268, 324.
 taken in Master's office, 1248-1250.
 (See ACCOUNTS, MASTER'S OFFICE, PARTIES.)
- accounts, plea of parol agreement to waive, 670.
 parties to suit for, 248.
 books, evidence, 1250.
- covenants, 333 n., 1660 and n. (a.).
- dissolution of, form of decree for, 1248, 2237 n.
 proceedings under decree for, 1249.
 proof of, 865 n.
- injunction, when granted in cases of, 1660.
 fraud, dissolution *ab initio*, 552 n.
- internal regulation not controlled, 333 n.
- manager of, when appointed, 1768.
- parties to suits relating to, 216, 219, 238, 242.
- payment into court, when directed in cases of, 1776, 1777.
- plea of none, 605, 608 n., 619, 620, 631.
 answer in support of plea, when necessary, 619, 620.
- receiver, when granted in cases of, 1727-1729.
 partner, or retired, or solvent, when appointed, 1732.
- service upon, 145 n., 149 n., 445 n.
- solicitors, between, production of documents in case of, 1827.

PARTY,

- meaning of expression in Ord. I., 20-32, 1009 n.

PARTY AND PARTY,

- taxation of costs as between, 1434, 1439.
 (See TAXATION.)

PARTY-WALL,

- injunction to prevent destruction of, 1689 n.

PATENT,

- account, when directed in cases of, 1642; at common law, 1642.
- analysis, when directed in cases of, 1642 n.
- assignee of, rights of, 1642 n.
- bill for infringement, form of, 814 n.; amendment of, 407 n.
- consolidation, and stay of proceedings of bills to restrain infringement of, when directed, 339 n., 801, 1644 n.
- co-owners of, one may sue for profits, 208 n.
- corporation officers, liability for infringement, 269 n.
- damages, assessment of, when directed in cases of, 1080 n., 1081 n.
- double pleading, when allowed in suit to restrain infringement of, 609.
- fraud, rescinding for, 8 n.
- injunction, in cases of, when granted, 1642; at common law, 1642.
- affidavit on application for, 1644, 1670.
- perpetual, made, at hearing, 1681.
- inspection, when directed in cases of, 1642 n., at common law, 1642.
 leave given, when, 1642 n.
- issues, form of, in cases of, 1642 n.

[The references apply to the star paging.]

PATENT — continued.

jury, right to, in cases of, 1071 n.
separate bills necessary against separate infringers, 389, 1644
trial of question of fact in, 1642.

PATENT OFFICE,

documents filed in, how proved, 865.

PAUPER,

suit against, 154–156; by, 87–44.
admission to sue, how obtained, 40; to defend, 155.
analogy of practice at law followed, 38.
consequences of, 41.
not a release from costs already ordered to be paid, 35, 155.
order for, 41; made at any time, 39.

must be made in court where issue is to be tried, 43.

discharge of, 40, 41.

service thereof, 41.

answer of, proceedings in default of, 501.

not printed, 758 n., 758.

appeal by, in Chancery, 40, 1462, 1482.

House of Lords, to, 1493; admission, how obtained in case of, 1493.

recognizance for costs, not required on, 1494.

appearance of, how entered, 588.

bankrupt, admitted to sue as, 39.

claimant under decree, admission of, as, 89.

contemnor may apply for leave to defend as, 504.

copies delivered to or by, charges for, 44, 900 n., 1445 n.

costs on dismissal of bill against, 155.

on dismissal of bill by, 42, 792, 808.

scandal introduced by, of, 42.

counsel or solicitor assigned to, must not refuse to act, 41.

court fees payable by, 43, 44.

dismissal of bill of, not ordered *ex parte*, 42, 792.

dispaupering, on the ground of property, 42.

because in possession of property in dispute, 42, 43, 156.

for vexatious conduct, 39, 43.

not ordered, where supplied with funds by subscription, 43.

or misconduct was in former suit for same matter, 89.

husband and wife, admission of, as, 89.

infant may sue as, 75; may appeal as, 1483.

infant Custody Act, may apply under, 1862, 1868.

married woman, admission of as, without next friend, 88, 111.

appeal by, 187 n., 1482.

next friend of infant, may be, 87, 88 and n., 74, 75; on appeal, 1483.

secus of feme covert, 37.

notices on behalf of, must be signed by his solicitor, 41, 1594.

person, cannot be heard in, 41.

petition on behalf of, must be signed by his solicitor, 41, 1604, 1605.

petition of right, may be brought or defended by, 183.

prisoner, assignment of counsel and solicitor to, 155, 510, 1065.

costs of, 501.

discharge of, on filing answer, 501.

idiot, lunatic, or of unsound mind, appointment of guardian for, 508.

pro confesso, proceedings to take bill, against, 501.

pro interesse suo, examination granted at instance of, 89, 1059

process of contempt, must be signed by solicitor of, 41.

report as to by keeper or jailer, 502.

representative character, cannot defend in, 155; or sue in, 88.

second suit by, for same matter, when stayed till costs of first paid, 39.

security for costs, when required from, 37 n.

solicitor of, duty of, 41.

Trustee Relief Act, applicant under, admitted as, 39.

PAUPER LUNATIC ACTS,

payment out of court, under, 1814.

PAWNEE AND PAWNER,

of chattel, when necessary parties, 222.

PAYMENT,

admission of, 782 n.

plea of, 909 n.

[The references are to the star paging.]

PAYMENT AND TRANSFER INTO COURT, 1770-1798.

- account brought into chambers, on admission in, 1781.
- administration suit, in, by party found a debtor, 1777.
- answer, when directed before, 1774, 1775, 1782.
- application for, 1779-1798.
 - answer on, 1780-1782.
 - account in book referred to by, when founded on, 1781.
 - actual amount may be shown by affidavit, 1780.
 - admission, must be on, 1780; nature of, 1780.
 - costs, whether executor allowed to retain money to answer, 1781.
 - denial of title, not ordered, in case of, 1780.
 - discharge himself by affidavit, defendant allowed to, 1781.
 - chief clerk's certificate, when founded on, time for making, 1781.
 - decree after, how made, 1781; evidence in support, 1782.
 - before, how made, 1779; evidence in support, 1779.
 - interest to be shown on, nature of applicant's, 1779.
 - attachment, when enforceable by, 1005, 1793.
 - auctioneer, by, of balance of deposit, 1772.
 - contingent interest, where applicant only entitled to, 1779.
 - damages, in respect of, 1082.
 - deposit on appeals, of, 1481, 1482.
 - deposit on sale by court, of, 1272.
 - directed, when, 1770-1778.
 - directors of company, by, when ordered, 1772.
 - effect of, 1778; on personal representative's right of retainer, 1778.
 - elegit* or *fieri facias*, not enforced by, 1003 n.
 - enforced, how, 1793.
 - evidence of default, 1793.
 - injunction, on application for, 1672, 1770.
 - interpleader suits, in, 1563.
 - judgment, order for cannot be registered as, 1036.
 - lien of solicitor, when discharged by, 1848.
 - married woman's right by survivorship, effect of, on, 115, 116, 1778 n.
 - married woman's fund, of, to credit of joint cause, effect of, 115; to joint account, 116.
 - mode of making, 1786.
 - ne creat*, discharge of, on, 1713.
 - order, usually necessary for, 1786; exceptions, 1786 n.
 - form of, where permissive, 1793.
 - partnership, in cases of, 1776, 1777.
 - admission, clear, generally required, 1777.
 - balance due to him, not when partner insists on, 1777.
 - unless there has been *mala fides*, 1777.
 - party, to suit by, who is found debtor to estate, 1777.
 - payment to party, amounts to, 1770 n. (a).
 - personal representatives and trustees, by, when directed, 1770-1773.
 - balance extends to any, although claims against it, 1771.
 - balance of, only ordered in, 1773.
 - unless money improperly lent, or payments improperly made, 1773.
 - danger to estate, need not be shown, 1770.
 - debt, money must not be a mere, 1773.
 - debtors to estate, when they are, 1772.
 - discharge of the office, not a, 1778.
 - discretionary powers, in case of, 1771.
 - implied trusts, extends to cases of, 1771.
 - interest on balance, of, not usually ordered, 1777.
 - partner, although fund in hands of, 1772.
 - prima facie* title only necessary, 1770, 1779.
 - shares only of parties to proceedings need be paid in, 1771.
 - prospective order for, when made, 1786.
 - purchase-money, of, on sales by court, 1276-1278, 1775.
 - default of purchaser on, 1282.
 - substitution of purchaser, in case of, 1285.
 - purchaser, by, when ordered, 1774, 1775, 1782.
 - receiver, by, of his balance, 1754, 1755.
 - retainer of, personal representative not affected by, 1425, 1778.
 - security for costs, when directed in lieu of bond, in cases of, 34.
 - trust fund in hands of third party, of, 1774.
 - trusts, in cases of, 1770-1774, 1776; in cases of implied, 1771, 1774, 1776.

[The references are to the star paging.]

PAYMENT AND TRANSFER INTO COURT — *continued.*

trustee, by, how enforced, 1005, 1798.

ward of court, of fund belonging to, 1778.

PAYMENT AND TRANSFER OUT OF COURT, 1794–1816.

abatement, pending, 1543, 1798.

absolutely entitled, order not made for payment of interest only to persons, 1798.

administrator *ad litem*, not ordered to, 203, 204, 1802.

annuity, to provide for payment of, dividends being insufficient, 1798 n.

appeal against, delay in execution of order for, 1471, 1794 n., 1814.

application for, how made, 1587, 1588.

separate account, where fund carried to, 1795.

apportionment of income, on, when tenancy for life, 1803, 1804.

assignor, service of application of, on, 1796.

attorney, power of, when ordered to holder of, 1801.

payment, how made, 1809.

charity fund, consent of Charity Commissioners necessary, 1797.

charity trustees, form of order for payment of interest to, 1799.

child-bearing, on assumption that woman is past age of, 1795 n.

class, form of order where applicant one of a, 1797.

contingency, of fund subject to, on what terms directed, 1795.

corporation aggregate, of fund belonging to, form of order for, 1800.

corporation sole, of interest to, form of order for, 1799.

costs of application for, by tenant for life, 1798.

separate account, when standing to, 1798.

Crown, to, form of order for, 1800.

deaf, dumb, and blind person, order in case of, 1798.

deposits on appeals, of, 1482.

dismissal of bill, ordered after, 1799.

dissolution of marriage, on, 1802.

dividends, mode of making, 1806, 1807.

dormant account, of fund standing to, 1815.

evidence in support of application for, 1797

feme sole, to, effect of her marriage on order for, 97

foreign probate, not made to representatives appointed under, 1809.

fraudulent representation, course, when obtained by, 1814.

general authority, where ordered to person acting under, 1801.

husband, to, of wife's fund, order for, effect of, 118.

husband and wife, to, order for, effect of, 118.

husband and wife, to, of income, form of order for, 1799.

infant domiciled abroad, form of order in case of, 1798.

infant's legacy to father, when directed, 1802.

judgment creditor, to, not ordered without consent of debtor, 1041, 1042.

legacy duty, form of order, where fund liable to, 1007, 1804.

legatee, payment not ordered to, in absence of personal representative of person in whose name fund stands, 1795.

limited administrator, to, 1809.

married woman, to, without acknowledged deed, 1802.

married woman, fund belonging to, not paid to husband without her consent, 92.

(See MARRIED WOMAN.)

possibility of issue, 1795 n.

married woman, to, as personal representative, form of order for, 1800.

order for, how drawn up, and title of, 1802.

schedules may be used in, 1006, 1805.

papers left on bespeaking minutes of order for, 99, 1803.

partners, to whom paid, in case of, 1808.

periodical payments, mode of making, 1807.

personal representatives, how and when payment made to, 1808, 1809.

papers left on bespeaking order for, 1009, 1803.

personal representative of person entitled, when not made to, 1795.

petition, application for, when made by, 1587.

presumption of death, on, 1795 n.

principal money, of, mode of making, 1804, 1805.

prospective order for, when made, 1798.

purchase-money, notice to purchaser of application for, 1278

separate account, of fund standing to, 1696–1698.

separate uses, of fund settled to, form of order for, 1800.

small sum ordered to be paid without letters of administration, 1802.

sole trustee, to, only ordered by consent, 1798.

statutory representative of the estate, not ordered to, 1809.

[The references are to the star paging.]

PAYMENT AND TRANSFER OUT OF COURT — continued.

- succession duty, form of order, where found liable to, 1007, 1804.
- successive tenants for life, order for, of interest to, 1799.
- tail, to tenant in, without disentailing deed, 99 n., 1802.
- trustees, to, form of order for, 1799.
- undertaking to apply, when ordered, on, 1800.
- widow, to, affidavit of no settlement required on, 95.

PEACE (BILL OF),

- class, when filed against some members of, 274.
- grounds for interference by, 1681 and n. (a).
- multifarious, when not, 346.
- perpetual injunction, granted on, 1682.

PEDIGREE,

- plaintiff claiming as heir need not state, 320.

PEER. (See PEERAGE, PERSON HAVING PRIVILEGE OF.)

PEERAGE (PERSON HAVING PRIVILEGE OF).

- address of, statement of, not required in bill, 359.
- answer of, taken on protestation of honor, 735, 746.
 - commission to take, form of, 749.
 - costs, read on questions of, 843, 1380.
- answer of, proceedings in default of, 493, 497.
- appearance of, proceedings in default of, 473-475.
- bill, service of, on, 442, 445, 446.
- breach of injunction by, process against, for, 1687.
- decree or order, enforcing against, 1044, 1066.
 - endorsement on copy served, 1044.
- discovery, bill of, proceedings to take *pro confesso*, against, 497, 530, 1559.
 - effect of order, 531, 1559.
- dwelling-house of, what is for purpose of service of bill, 444.
- letter missive, entitled to before service of endorsed copy of bill 442, 445.
 - (See LETTER MISSIVE.)
- plea by, put in on protestation of honor, 628.
- pro confesso*, proceedings to take bill against, 497, 523..
- process against, for want of appearance, 472-474.
 - answer, for want of, 498
 - decree or order, for non-obedience to, 1044, 1066.
 - injunction or restraining order, for breach of, 1687.
 - non-payment of costs, for, 1454.

(See PRIVILEGED PERSON.)

- receiver, objectionable as, 1733.

- resident abroad, must give security for costs, 28.

(See COSTS, SECURITY FOR.)

- sequestration against, answer for want of, 496, 497.

 appearance, for want of, 473-475.

 costs, for non-payment of, 1454, 1455.

 decree or order for non-obedience to, 1044, 1066.

 injunction, for breach of, 1687.

- witness, must be sworn when a, 886.

PENAL SERVITUDE,

- substituted for transportation, 58 n.

PENALTY,

- answer, objection by, to discovery on the ground of exposure to, 716.

- demurrer to discovery, on the ground of exposure to, 562-569.

 allowed, though no demurrer to relief, 548.

- demurrer by witness, on the ground of exposure to, 942.

- discovery, objection to, on ground of exposure to, 887, 562-569.

 exceptions, broker, acting as, without license, 566.

 conspiracy, cases of, 566.

 covenant not to demur, 565.

 foreign country, defendant liable to penalties in, 567.

 fraud, cases of, 565; by trustees, 566, 567.

 libel, cases of, 566.

 payment in nature of penalty, 565.

 personal penalty, when, 567; no longer recoverable, 567.

 statutory provisions, 566, fraudulent trustee, 566.

 trade-marks, infringers of, 567.

[The references are to the star paging.]

PENALTY — continued.

discovery, bill, of, does not lie where discovery would subject defendant to, 1557.
expiration of time for suit, discovery must be given after, 567.
foreign country, in, discovery that would expose defendant to, must be given, 567.
injunction to relieve against, when granted, 1657.
interest, when calculated beyond, 1254.
plea to discovery on the ground of, 680
production, objection to, on ground that it would expose party to, 1835.
waiver of, when necessary, and effect of, 386, 387, 568.
demurrer for want of, 387, 563.

PENDENCY OF ANOTHER SUIT (FOR THE SAME MATTER),

abroad, 815 n.
costs, when objection taken by answer, 687 n.
demurrer, on the ground of, 581.
motion, objection not taken by, except in infant suits, 69, 70, 684.
or administration suits after decree, 685.
objection on the ground of, 632-638.
plea on the ground of, 682-638.
averments in, 686.

(See *PLAINT*.)

oath, put in without, 688, 687, 688.
practice, where second suit more extensive than first, 632, 683, 688.

PENDENTE LITE,

alienation, when restrained, 1652; injunction granted *ex parte*, 1651, 1665.
assignees, generally not necessary parties, 280 n., 281, 1517.
unless conveyance of legal estate required, 281.
leave to attend proceedings, when given, 281 n., 1517.
made parties by supplemental proceedings, 281, 1517.
receiver, when appointed at instance of purchaser, 1720.
sequestration, how affected by assignment *pendente lite*, 1058 and n.

PENSION,

receiver, when granted, of, 1780.
sequestration, may be taken under, when, 1058.

PERIODICAL PAYMENTS,

time for making, expression of, in decree or order, 1006, 1785.
mode of effecting, 1807.
evidence of condition on which payable, 1807.

PERIODICAL (TITLE OF),

infringement of right to, restrained, 1648.

PERJURY,

amendment of answer not permitted, pending indictment for, 779.
subornation of, demurrer that discovery would expose defendant to penalty of, 568.
witness, new trial, on ground of, 1122; at law, 1132.

PERMANENT RESIDENCE (PERSON WITHOUT),

must give security for costs, 27

(See *COSTS, SECURITY FOR*.)

PERPETUATE TESTIMONY (SUIT TO), 881, 1572-1575.

affidavit of facts must be filed with bill, 941, 1578.
Attorney-General, when made a party to, 185 n., 1572
averments in bill, 1572.
bill for, not convertible into bill of discovery, 1575.
costs of, order for, 941, 1558, 1574.
de bene esse, examination of witnesses in, 933.
demurrer to, on grounds of, 818, 1572, 1573.
denial of plaintiff's case, proceedings on, 1572, 1573.
discovery, bill of, may pray, 547, 548.
discovery, extent of, which may be required by, 1578.
dismissed, for non-prosecution, cannot be, 810, 1578.
evidence, how taken, 1574; when and how used, 1574.
order to use, how obtained, 1574.
production of, elsewhere than in Court of Chancery, 1574.

[The references are to the star paging.]

PERPETUATE TESTIMONY (SUIT TO) — *continued.*

- when admissible in another suit though bill dismissed, 870, 871.
- foreign court, for use in, 1573.
- form of bill for, 1572.
- hearing, not brought to, 1578.
- heir, when not allowed costs of, 1883.
- legitimacy, as to, 1573.
- marriage, of, does not lie at instance of tenant in tail and his children, 316.
- or of eldest son of heir in tail of a dignity, 317.
- neglect to prosecute, proceedings on, 1578.
- prayer of bill for, 1572.
- prosecution cannot be dismissed for want of, 811, 1573.
- statutory jurisdiction, in cases of, 1572.
- will, execution of, presumptive, devisee or next of kin cannot institute, 816.
- witnesses, both parties may examine under order, 1578.

PERSON,

- demurrer to the, 556.

(See DEMURRER.)

- plea to the, 627, 680–683; conclusion of, 685.

(See PLEA.)

- description of, in decree or order, 1006, 1784.

PERSON (PARTY ACTING IN),

- name and place of residence of, and address for service (if any) to be written or printed on writs sued out by, and on proceedings left at Record and Writ Clerks' office, 454, 455.
- service of proceedings upon, how effected, 455.

PERSON NOT A PARTY TO RECORD,

- appeal by, 1460, 1461.
- dissolution of injunction, application for, how made by, 1675 n.
- process against, 1061
- service on, how effected, 456.
- subpoena for costs issued against, 1455.

PERSON OF UNSOUND OR WEAK MIND. (See UNSOUND OR WEAK MIND, PERSON OF.)

PERSON TO REPRESENT THE ESTATE. (See REPRESENTATIVE OF THE ESTATE.)

PERSONAL ESTATE,

- account of, in single creditor's suit, not binding on persons interested, 1207; outstanding, inquiry for, in decree for account of personality of deceased person, 1005.
- parties to suits relating to, 249, 255.
 - legatees, residuary or pecuniary, not necessary parties to suits to charge or recover, 255; except in cases of ademption, 255 n.
 - persons having specific liens or specific legatees of wife's paraphernalia, may be, 255.
 - personal representatives, necessary parties to suits, to charge, 249.
- sequestration, effect of, upon, 1052.
- wife's, bound by admissions in joint answer of her and her husband, 184, 185.

PERSONAL REPRESENTATIVES.

- account of, when not taken in absence of, 201 n.
- admission of assets by, effect of, 236.
- amendment added by, 407 n.
- assignor of bond, of, when necessary party, 199.
- bid at sale under decree, not allowed to, 1271 n.
- charging with untraced parts of the estate, 1225.
- costs of, 1411, 1415; personal liability to, 1421.
- strangers, in suits with, 1881, 1882.

(See Costs.)

- costs, charges, and expenses, when allowed, 1283, 1488.

- creditor's action restrained after decree, on application of, 1615.

- death of, form of order for revivor on, 1511 n.

- revivor, when not necessary on, 1527.

- when cause allowed to proceed without, 1527.

- deceased, personal representative of, when necessary party, 252.

- decree, distributing fund under, protected by, 1207.

[The references are to the star paging.]

PERSONAL REPRESENTATIVES — continued.

- defaulting trustee, of, costs of, 1411 n.
- description of, in decree or order, 1008, 1784.
- dispensed with, when, 200, 201, 202, 1527.
- English, constitution of, when necessary, 200, 250, 251 n.
- frauds, statute of, whether bound to set up, 655 n.
- husband of, generally a necessary party, 258.
- Indian, what allowed as just allowances, 1285.
- infant's legacy, not allowed costs of bill to secure, 81, 1429.
- injunction, when not issued for protection of, 1616.
- insolvency of, creditor or legatee of testator may sue in case of, 828.
- interest on balances, when charged with, 1369, 1370.
- jurisdiction, out of, limited administration granted, in case of, 204, 205, 252 n.
- just allowances, what are, in the case of, 1232-1236.

(See JUST ALLOWANCES.)

- limitations, statute of, not bound to set up, 648, 644
- limited administrator, when bound by proceedings of, 201.
- loss of time, not entitled to compensation for, 1283.
- married woman suing as, should make husband co-plaintiff, 90.
- married woman, *ne exeat* not granted against, 180, 1704.
- Master's office, when entitled to attend proceedings at, 1172, 1173.
- mortgagee, of, parties to suit to foreclose by, 221.
- mortgagee, of, when necessary party to foreclosure suit, 221.
- ne exeat* against, amount for which marked, 1709.
- new, whether appointment of, necessary on death of proving executor, 252 and n.
- obligee of bond, of, when necessary party, 199.
- parties, when necessary, 200-205, 221, 248-254, 261, 282, 318, 319.

(See PARTIES.)

- party, decree against, only made by consent, when not a party, 253.
- payment into court by, when directed, 1770-1773.
- payment out to, how and when made, 1808, 1809.
 - considerable lapse of time, not ordered to, after, 224, 1795.
 - form of order, when a married woman, 1800.
 - papers left on bespeaking order for, 1009, 1803.
- paupers cannot sue as, 38, 155; or defend, 155; unless also beneficially interested, 38.
- persons beneficially interested, when not necessary parties to suit by, 212.
 - or against, 248, 249, 255, 322, 523.
- proceedings under decree, when permitted to be brought in under, 208.
- pro confesso* decree, how far bound by, 529.
- purchaser of, necessary party to specific performance suit, 285.
- receipt of assets by, when restrained, 1665.
 - ex parte* injunction, when granted, 1664.
- retainer of, not affected by plaintiff's right to costs, or payment into court, 1429, 1778.
- revivor against, form of order for, 1526.
- sequestration, revivor of, against, 1059.
- solicitor, when not allowed professional charges, 1234, 1235.
- solicitor, of, lien of, for deceased solicitor's costs, 1844.
- transfer or delivery out of court, how made in case of, 1813.
 - registrar's certificate for, evidence on which issued, 1813.

(See ADMINISTRATOR, EXECUTORS.)

PERSONS INTERESTED,

- inquiry as to, when directed, 990.

PERTINENCY,

- in answer, 728 n.
- in bill, 849.
- exceptions for lack of, 849 n.
- presumption of, 349 n.

PETITIONER,

- jurisdiction, resident out of the, security for costs by, 27, 31.
- name and description of, statement of, 1604, 1605.
- signature of, to petition under Sir S. Romilly's Act, 1855.

PETITIONS, 1603-1612.

- address of, 1604; if for order of course, 1604.
- adjourned, restoration of, to paper, how effected, 1608.
 - service of notice of, 1609.

[The references are to the star paging.]

PETITIONS — continued.

affidavits on, 1608.

 notice of reading, when necessary, 899.

 search for, 899.

 time for filing, 899.

amendment of, when allowed, and how effected, 1610.

appeal from order made on, 1472, 1477, 1611.

 (See APPEALS AND REHEARINGS.)

appeal, of, in case of appeal in Court of Chancery, 1477, 1483.

 (See APPEALS AND REHEARINGS.)

 in case of appeal to House of Lords, 1498, 1494, 1497.

 (See APPEALS TO HOUSE OF LORDS.)

applications made by, 1587, 1588, 1608.

branch of court to which addressed if in cause, 1588, 1589.

 marking for, if not in cause, 1588, 1604; effect thereof, 1589, 1604.

briefs on, 1608 n.

cause, in, not allowed before bill filed, 1608, 1604.

compromise suit, application for, made by, 1588.

confirmation of Sales Act, under, 1873, 1874.

costs on, 1489, 1440, 1442, 1605, 1610, 1611.

 (See Costs.)

course of, 1603; address of, 1604; usually to Master of the Rolls, 1608.

 order upon, how drawn up, when presented to Lord Chancellor, 1605 and n.;
 to the Master of the Rolls, 1608.

declaration of rights, not made on, 1608.

declaration of Title Act, 1862, under 1864, 1865, 1866.

decree or decretal order, application arising out of, made by petition, 1588.

definition of, 1587, 1603.

demurrer to set down, address of, 1604, contents of, 594.

different sorts of, 1603.

disability, on behalf of person under, 1604.

dismissal of bill, special application for, when made by, 796 n.

evidence on, 888, 1608.

examination of witnesses before presentation of petition, irregular, 888.

fees on, when, to Lord Chancellor, 1606 n.

 to Master of the Rolls, 1606 n.

filings, 1609.

flat upon, 1605, 1616; in case of petition of appeal, 1490, 1605.

foot-note, to, 1005; petition of appeal, in case of, 1478.

further hearing after trial, to set down cause for, 1147.

guardian *ad litem* appointed if respondent under disability, 160, 161 n., 176, 1607.

hearing of, 1608.

 (See HEARING.)

impertinence in, 1606.

infant, on behalf of, by whom presented, 1604.

Infant Custody Act, under, 1862, 1868.

infant respondent, appointment of guardian *ad litem* for, 160, 161 n., 1607.

 application for, how made and evidence, 161 n.

injunction, not granted upon, 1668 n. (a).

investment of fund in court otherwise than in consols, for, 1791.

judge, heard by what, 1588, 1589, 1604; marking name of, on, 1588, 1604.

judgment creditor, by, for sale of land, 1087.

lunatic, against, when defended by his committee, 175.

 when by guardian *ad litem*, 176.

married woman, on behalf of, by whom presented, 1604.

name and description of petitioner, statement of, 1604.

next friend, when presented by, 1604.

next friend for the purposes of the application, when presented by, 1604.

note as to service of, 1605.

order on, 1589; drawn up, how, 1609; discharge or variation of, 1611; enforcing, 1608, 1609.

 marking with name of judge, 1588, 1589.

papers left on bespeaking minutes of orders made on, 1009, 1011, 1609.

pauper, by, signature of solicitor to, 41, 1604, 1605.

pauper, for admission of, as, to sue, 40; to defend 158; discharge of, 158.

payment out of court, application for, when made by, 1587, 1798.

 costs of, 1611 n., 1798.

payment out of court of married woman's fund, for, 98.

plea, to set down, address of, 1604; contents of, 688.

[The references are to the star paging.]

PETITIONS — continued.

prayer of, 1605.
presentation of, to Lord Chancellor, 1605; to Master of the Rolls, 1606.
pro confesso decree, for leave to answer after, 528.
receiver for, 1784 n.
record, reference to, on, 1604.
rehearing, for, 1477–1484, 1603, 1605.
representative of the estate appointed on, 203.
Romilly's (Sir Samuel) Act, under, 1855.
scandal, in, 1605.
security for costs, when required on, 27, 81, 1605.
separate account, to deal with fund standing to, 1796.
separate certificate, application founded on, made by, 1588.
service of, 1607; affidavit of, 1609.

(See SERVICE.)

setting down, 1608.
settlement of, by counsel, costs of, 1439, 1605.
signature of counsel required to, when, 1605.
special, 1603.
standing over, restoration to paper, how effected, 1609; if unopposed, 1609; notice of, 1609.
stating part of, 1605.
statutory jurisdiction, proceedings under, usually commenced by, 8, 1851.
stay proceedings, application for, when made by, 796 n.
stop order, for, 1695.
time for service of, 1608.
title of, 1604.
amendment of, effect on affidavits sworn before alteration, 893, 1608.
statutory jurisdiction, under, 1604.
unopposed, restoration to paper, how effected, 1609.
unsound mind, person of, respondent to, appointment of guardian *ad litem*, for 176, 1607.
application for, how made, and evidence in support, 176, 1607.
wind-up suit, application to, made by petitioner, 1588.
withdrawal of appeal, for, 1483.

PETITION OF RIGHT. (See RIGHT, PETITION OF.)

PETITIONER,

description of, statement of, 1604.
jurisdiction, resident out of the, security for costs, by, 28, 1605.

PETITIONING CREDITOR,

debt of, notice to dispute, must be given, 65, 884, 885.

PETTY-BAG OFFICE,

general course of proceeding in, 1758–1768.

PHYSICIAN,

communication to, not privileged, 576.

PLAINTIFF, 1882 n., 1889 n.

abode of, 357 n., 358; demurrer for non-statement of, 357 and n., 561.

plea for misdescription of, 358, 680.

addition of, by amendment, 401, 405.

answer, not of course, after, 405.

discovery, bill of, not allowed in case of, 405, 1559.

hearing, not included, under order at, for addition of parties at, 405.

address of, statement of in bill, 855, 857; when not required, 858.

omission of, how taken advantage of, 358, 561.

in United States court, 357 n.

alien, 45–53.

alienage of, plea of, 52, 630.

amendment of bill, 405 n., 418 n.; must join in affidavit, on specia. application for, 415.

attainder or conviction of, plea of, 57, 680.

attainted or convicted person, 53–58.

Attorney-General, on behalf of Crown, 5–16.

birth-place of, when discovery as to, must be given, 5, 565.

bankrupt, 58–68.

bankruptcy of, an abatement, 63, 1542; motion for revivor or dismissal of bill on, 65, 66, 818.

[The references are to the star paging.]

PLAINTIFF — continued.

- after decree, for prosecution of suit or stay of proceedings, 814.
- creditor's suit, in, who entitled to revive, 1540.
- demurrer on ground of, 62.
- dismissal of bill for want of prosecution, not ordered after, 64, 814, 815.
- order to carry on proceedings, in case of, 65, 66.
- plea of, 630 and n.
- character, that he does not sustain assumed, 630.
- church-warden, revivor on change of, 1520 n.
- class-suit, description of, in, 245, 360 ; necessary qualifications of, 244, 245.
- conflicting interests may be united in sole, 284 n.
- contempt of, not an objection to the hearing of the cause, 980.
- conviction of, for treason or felony, plea of, 56, 630.
- corporations and joint-stock companies, 20-26.
- coverture of, demurrer on account of, 558.
- coverture of, plea of, 630.
- creditor, must prove his debt under decree, 1209.
- creditor's deed, execution of, by dismissal, for want of prosecution not ordered after, 64 n.
- motion for revivor or dismissal of bill on, 63 n.
- criminal act, cannot derive title under a, 57.
- cross-bill, in, security for costs not required, for misdescription of, 359, 1553.
- death of, abatement on, 1507 ; revivor on, 1525 ; effect thereof, 1544, 1545.
- when not an abatement, 1511, 1512 ; in interpleader suit, 1571.
- death before decree, motion for revivor or dismissal of bill on, 812, 813.
- who entitled to revive, 1537, 1538.
- death of, discharge of sole defendant in custody for contempt on, 511.
- death of, no revivor where determination of interest total, 1519, 1520 n.
- who entitled to revive, on, 1525, 1527, 1537 ; effect of revivor, 1545.
- death of person named as, plea of, 630.
- description of, statement of, 357 ; when not required, 359.
- in amended bill, 402 n.
- class suit, in, 245, 359, 360.
- omission of, how taken advantage of, 358.
- doing equity, 885 and n.
- dominion of, over suit, until decree, 790, 792 ; in class suits, 244, 794.
- executor, plea that he is not, 319, 630.
- fictitious person, that plaintiff is, 630.
- foreign state, government of, 19, 20.
- (See FOREIGN GOVERNMENT.)
- guardian *ad litem*, ineligible to be, of infant, 161 ; or of person of unsound mind, 176.
- heir, plea that he is not, 630.
- idiot, 82-86.
- idiocy of, plea of, 84, 942.
- infancy, plea of, 630 ; demurrer on ground of, 558.
- infant, 67-85.
- information and bill, in, who ought to be, 11.
- interest of, inquiry into when directed, 990, 991.
- interest, demurrer for want of, in, 295 n., 302, 314, 558 : plea for want of, 631.
- joinder of plaintiffs, 208 n., 211 n., 216 n., 217 n., 248 n., 303, 334 n. (a).
- jurisdiction, person out of the, 27-36.
- ne exeat*, not granted at instance of, 1704.
- lunatic, idiot, or of unsound mind, 82-86.
- lunacy, of, plea of, 84, 630 ; demurrer on ground of, 84, 556.
- lunacy of, *pendente lite*, supplemental order on, 1525.
- after decree, stay of proceedings, 85.
- marriage of female, abatement on, 113.
- motion for revivor or dismissal of bill, on, 794.
- revivor on, and who entitled to order, 1515.
- married woman, 87-128.
- misdescription of, plea on ground of, 358, 680 ; omission or mistake in, of, how taken advantage of, 358, 402 n.
- name, plea of misdescription of, 358, 680.
- name and address of, statement of, in bill, 357 ; when not required, 359, 1554.
- omission of, how taken advantage of, 358.
- name and address of his solicitor, or agent, or of his own if acting in person, to be inserted at end of bill, 889.
- endorsement of on proceedings and documents, 454.
- ne exeat*, against, 1705.

[The references are to the star paging.]

PLAINTIFF — *continued.*

non-appearance of, at hearing, proceedings upon, 979.
outlawry of, plea of, 53, 630.
partner, plea that plaintiff is not a, 605, 631.
pauper, 37–44.
person of, demurrer to, 556.

(See DEMURRER.)

plea to, 630.

(See PLEA.)

residence, without permanent, ordered to give security for costs, 27, 31 n.
right of, must be shown by bill, 814–817.
security for costs, when required to give, 26 n., 27–36, 358.
 required from, 26 n., 27–36, 358.
striking out name of, 72, 402–405.

(See STRIKING OUT NAME.)

tax-payers, 803 n., 1681 n. (b).
tenant in tail, death of, effect of, and proceedings on, 229, 266.
title of must be shown by bill, 817–821.

PLEA, 603–705.

rule as to in United States courts, 543 n.
 where bill charges fraud, plea must be fortified by answer, 543 n.
abatement, in, definition of, 626.
Act of Parliament, of, 639–659.
 averments in, 657; must be upon oath, 658, 686.
administrator, that defendant is not, 631; that plaintiff is not, 319, 630.
Admiralty, of judgment of Court of, 663.
admissions, constructive, by, 887.
advance of, 691; in injunction cases, 691, 1671.
adverse possession, of, 672, 2095 n.
 general allegation of disability, not invalidated by, 672.
affidavit of party to, in United States court, 686 n.
affirmative, what is, 618, 654, 669 n.
agreement, of, 671; averments in, 672.
agreement to waive accounts, of parol, 670.
alienage of, 52, 630.
allowance of, 696–699.
 amendment of bill after, 419, 698, 789.
 costs on, 698.
 dissolution of injunction after, 698.
 effect of, 698.
amended bill, to, 680.
 answer to original bill may be read to counterplead, 680, 694.
 case not altered, where, does not lie after answer to original bill, 680.
 parties, for want of, 681.
amendment of, 703, 704.

(See AMENDMENT OF PLEA.)

amendment of bill, after, 282, 411, 419, 420, 625, 692, 694, 698; after allowance of, 419, 698; after overruling, 413, 420.

(See AMENDMENT OF BILL.)

answer after plea, 700 n., 702 n.
answer in *subsidiū*, definition of, 625.
answer in support of, 604 n., 614–625, 2095 n.
 award, in plea of impeached, 297, 298, 616, 670, 671.
 counterplead plea, when read to, 694.
 decree, in plea of, 605, 660, 661.
 defence, no part of, 624.
 documents, as to, general rules relating to, 621–623.
 affirmative plea, in case of, 621, 622.
 necessary, when facts stated to avoid plea, 622.
 not necessary, where no fact stated to avoid plea, 622.
 or effect of deeds misstated, 622.
 negative plea, in the case of, 623.
answer overruling, 617 n.
exceptions to, after allowance of plea, 625.
extent of, in the case of affirmative plea, 616–621; of negative plea, 619, 620.
form of, 682–685; full and clear, must be, 624.
fraud, as to charges of, 624.
frauds, in plea of statute of, 618, 655, 657.
judgment of another court, in plea of, when equitable circumstances against it, 616, 684.

[The references are to the star paging.]

PLEA — continued.

- limitations, statutes of, in plea of, 618, 654; when fraud alleged, 645.
- necessary, when, in the case of affirmative plea, 618.
- when equitable circumstances alleged to defeat legal bar, 616.
- whether alleged substantively or as a pretence, 616.
- where no legal bar alleged in bill, 616.
- negative plea, in the case of, when, 614, 619.
- plea negative in substance, though affirmative in form, 615, 619.
- when not necessary, where legal bar simply derived or not allowed by bill, 618.
- negative pleas, in case of, when, 619.
- no interrogatories, in case of, 615.
- no title, in plea of, 620.
- partnership, in plea of none, 620.
- pure plea, in case of, 615.
- purchase for value, without notice, in plea of, 618, 677-679.
 - denial of notice by, 618, 678, 679.
 - documents, as to, 678.
- release, in plea of, 689; in suit to set it aside, 616.
- stated account, in plea of, when fraud or error charged, 687; in suit to set it aside, 616.
- test of sufficiency of answer in support of a plea, 625 n.
- argument, setting down for, 692 and n.
- argument, when not set down for, 694.
- attachment, plea after issue of, on payment of costs of contempt, 691.
- attainder, or conviction of, of defendant, 156, 631; of plaintiff, 57.
- oath, put in, without, 687.
- averments in, 604 n., 605 n., 611, 684.
 - Act of Parliament, in plea of, 658.
 - affirmative, what are, 618.
 - agreement, in plea of, 671.
 - award, in plea of, impeached, 297, 298, 616, 670, 671.
 - clear, distinct, and positive, must be, 624, 684.
 - decree, in plea of, 661.
 - fine and non-claim, in plea of, 662.
 - frauds, in plea of, statute of, 656, 657.
 - judgment of other court, in plea of, 685, of foreign court, 684.
 - limitations, in plea of, statutes of, 654, 655; where fraud alleged, 645.
 - office of, 611, 612.
 - negative, what are and when used, 614.
 - pending suit, in plea of, 686, 687.
 - purchase for value, without notice, in plea of, 611, 618, 675-679.
 - denial of notice, 678, 679; of fraud, 678.
 - payment of price, of, 677.
 - possession of vendor, of, 677.
 - reversion, of title to, 677.
 - seisin, of, 678.
 - recovery, common, in plea of, 662.
 - release, in plea of, 689.
 - stated account, in plea of, 613, 666, 667.
 - title, in plea of, 673.
 - award, of, in suit to impeach it, 297, 298, 605, 670, 671.
 - avermant and answer in support of, 297, 298, 605, 616, 671.
 - where dispute referred after bill filed, 670.
 - bankruptcy of defendant, of, 157, 606, 631; of co-defendant, 157.
 - of plaintiff, 63, 606, 630.
 - oath, put in without, 62 n.
 - bankrupts, of the acts relating to, 658.
 - bar, in, 638-680, 685; conclusion of, 685; definition of, 628, 627, 638.
 - bill, to the, 632-639; definition of, 627, 632.
 - cause paper, when put in, for hearing, 693.
 - certainty required in, 683.
 - certificate of counsel to, in United States courts, 686 n.
 - and affidavit of party, 686 n.
 - Chancery, plea that Court of, is not proper tribunal, 628.
 - requisites of, 628, 629.
 - character, that defendant does not sustain assumed, 681.
 - that plaintiff does not, 630.
 - committee of lunatic, when put in by, 758, 754.

[The references are to the star paging.]

PLEA — continued.

- Common Law, of judgment of Court of, 663.
conclusion of, 685.
conveyance, of, 678.
conviction for treason or felony of defendant, 631 ; of plaintiff, 630.
oath, need not be on, 686-688.
corporation aggregate, of, put in under common seal, 688.
costs of, 698, 699.
on dismissal of bill liable to, 603, 1394.
(See Costs.)
coverture of defendant, of, 631 ; of plaintiff, 680.
criminal act, that plaintiff derives his title under, 58.
death of plaintiff, of, 630.
de novo, leave to plead, when given, 703, 704.
decree or order, of, 605, 658-661, 664, 692, 1019.
answer in support of, 601, 616, 624, 660.
argument, not set down for, unless defective in form, 661, 692 ; but see 637 n.
as beneficial to plaintiff, must be, 660.
averments in, 618, 614, 680, 661.
conclusive, of plaintiff's rights, must be, 660.
enrolment, necessity of, 660, 1019.
Equity, of other Courts of, 661.
final, must be, 660.
foreclosure suits, 660.
fraud, where allegation of, 660.
inquiry into truth of, proceedings on, 661.
same matter, must be for, 659.
set down when it may be, 661.
deed enrolled under Fines and Recoveries Abolition Act, of, 661.
defence, by, when appropriate, 603.
defences, distinct, by plea and answer, not allowed, 618.
demurrable bill, to, bad, 603.
demurrer overruled, after, 600 ; leave of court necessary for, 600.
demurrer to, 603 n., 692 n.
disability of co-defendant, of, 631, 632.
discovery, to, 680.
discovery, bill of, to, 680 ; of statutes of limitations, 639, 1418.
dismissal of bill, of 659.
bill and answer, on neglect to reply after hearing on, 983.
cause set down, after, 793.
election, on, cannot be pleaded, 817.
prosecution, for want of, cannot be pleaded, 659, 812.
set down for hearing or reply, on neglect to, 695, 812.
dismissal of bill on neglect to set down or reply to plea, 695, 812.
distinction between demurrer and plea, 603.
division of, 626.
double, what is, 607, 608, 2095 n. ; when not allowed, 607, 608, 703 n.
when allowed, 608 ; order for, necessary, and how obtained, 609.
election, order for, not made till plea argued, 691, 816.
entry of, with Registrar, not necessary, 692.
equity, plea that subject-matter is not within jurisdiction of, 628.
erasures in, how authenticated, 689.
evidence not to be stated in, 686 n.
exceptions to answer accompanying, 691, 760.
to answer in support of, 625.
(See EXCEPTIONS FOR INSUFFICIENCY.)
executor, that defendant is not, 631 ; plaintiff is not, 319, 630.
extent of, statement of, 683.
facts, may consist of several, when, 603, 607.
fictitious person, that plaintiff is a, 630.
filing, 689, 690 ; effect of, 691 ; notice of, 689.
whether compliance with order to answer, 690 n.
fine and non-claim, of, 662.
foreign court, of judgment of, 664.
forfeiture, on ground that discovery would expose defendant to, 680.
forgery, 639 n.
form of, 681-689.
accompanied by answer, where, 685.
adverse possession, of, 672.

[The references are to the star paging.]

PLEA — *continued.*

- alienage, of, 52.
- heir, that plaintiff is not, 630 n.
- limitations of statute of, 654.
- local or private act, of, 658.
- outlawry, of, 53, 688.
- parties, when for want of, 682.
- purchase for valuable consideration, without notice, of, 675–679.
- recovery, of common, 662.
- release, of a, 669.
- stated account, of, 666.
- title, of, 672.
- form of bill, on ground of defect in, 680.
- fraud, facts to be stated, 324 n.
- frauds, of statute of, 561, 618, 619, 655 and n., 656 and n.
 - answer, in support of, 619, 655, 656.
 - averments in, 655, 656.
 - fraud, not permitted in order to enable defendant to commit a, 657.
 - specific performance, to bills for, 656.
 - trusts, to bills relating to, 655, 656.
- general requisites of, 682, 683.
- grounds of, 625–681.
 - guardian *ad litem*, when put in by, 758, 754.
 - heading of, 681, 682, 2094 and n.
 - answer, when accompanied by, 682.
 - correction of misnomer of defendant in, 681.
 - husband and wife, when put in by, 681, 682.
 - joined with other defence, when, 788.
 - marriage of female defendant since filing of bill, in case of, 681.
 - several defendants, in case of, 681.
 - hearing of, 694.
 - heir, that defendant is not, 631 ; plaintiff is not, 604, 630.
 - husband and wife, plea of suit by, when bad to subsequent suit by wife, 108, 636.
 - idiocy of plaintiff, of, 84, 630.
 - impertinence in, 686.
 - indorsement on, 689.
 - infancy, of plaintiff, of, 630.
 - infant, on behalf of, put in by guardian *ad litem*, 753.
 - ingrossment of, 689.
 - injunction, not granted pending, 691, 1671.
 - Inn of Court, of jurisdiction of Benchers of, 628, 629.
 - insolvency of husband, in joint suit for wife's annuity, 108 n.
 - inquiry, subject of, when cause is heard on a plea, 695 n.
 - insufficiency of bill for purpose of complete justice, on ground of, 638.
 - interest, for want of, in defendant, 299, 681 ; in plaintiff, 630, 681.
 - interlineations in, how authenticated, 689.
 - introduction of unimportant fact does not vitiate, 610.
 - Irish Court of Chancery, of decree of, 664.
 - issue, what is in, upon replication to a plea, 695 n.
 - issue on, how taken, 696.
 - issuable matter, must be tendered by, 683.
 - joint plea and answer, 617.
 - election, defendant not entitled to, after, 816.
 - parts of the bill to which they apply must be distinguished, 618.
 - judgment of courts of ordinary jurisdiction, of, 662–665, 2101 n.
 - averments in, and answer in support, 616, 684, 685.
 - does not lie, where bill states no equitable matter to avoid judgment, 684.
 - jurisdiction, to, 627–630, 685 ; conclusion of, 685 ; definition of, 627.
 - insufficient, when, 629.
 - one only allowed, 629.
 - requisites of, 629.
 - several reasons why court has not jurisdiction, may show, 630.
 - to the jurisdiction of United States courts as dependent on citizenship, 628 n.
 - language of, 684.
 - limitations, statutes of, 639–655.
 - accounts, to bills for, 640, 2095 n.
 - answer in support of, 618, 640, 641, 645, 655, 656.
 - averments in, 645, 654, 655.
 - debts, payment of, to bills for, 640.

{The references are to the star paging.]

PLEA — *continued.*

- discovery, to bill of, 640, 1559.
dower, to bill for arrears of, 658.
ecclesiastical or eleemosynary corporations, in case of demands by, 654.
ecclesiastical benefice, in cases of presentation to, 654.
form of, 654.
fraud, where applicable in cases of, 645; answer accompanying, 645, 655; averments in plea, 655.
fraud, concealed, in cases of, 649.
judgment, in case of, 654.
land, in case of claim for, 609, 649, 654; where express trust of, 649.
legacies, in case of, 652, 654; to suit for interest on, 658.
lien on land, in case of, 654.
mistake, inapplicable in case of, 645.
money charged on land, in case of, 651.
 interest on, in suit for, 658.
mortgages, in cases of, 650, 651.
oath, must be on, 686.
outstanding terms, to bill to prevent setting up of, 639.
redeem, to bill to, 639.
rent, to claim for, 649.
 arrears of, to suit for, 653.
 express trust of, when, 649.
simple contract, in case of claims by, 654.
trusts, in case of, 642.
 express, when applicable to, 649.
trustee and *cestui que trust*, not applicable between, 644, 649, 653, 654.
 unless possession of trustee adverse, 644.
local act, of, 658; form of, 658; must be upon oath, 658.
Lord Mayor's Court, of judgment of, 668.
lunacy of plaintiff, of, 84, 630.
lunatic, on behalf of, put in by committee or guardian *ad litem*, 753, 754.
matter pleaded, statement of, 682.
matters impeached by the bill, of, 605.
matters subsequent to the bill, of, 606.
misdescription of plaintiff, on ground of, 857, 680.
mortgage, of none, in foreclosure suit, 605.
negative, what is, 604; form of, 620, 621.
negative matter, of, how pleaded, 605.
number of, 608.
oath, must be on, unless of matter of record, 686 and n., 687.
 of pendency of former suit, whether on oath, 688 and n.
 accompanied by answer, must be on, 688.
Act of Parliament, of, must be on, 658.
averment of identity, not rendered necessary by mere, 686.
omission of, cannot be waived, 688.
omission of, effect of, 688 n.; must be on oath, though oath to answer waived, 688 n.
plea of pendency of former suit, not put in on, 635; unless in suit in another court, 688 n.
oath, or signature, how put in without, 689.
 order for, how obtained, 689.
object of, 603.
office copy of, taken by plaintiff, 691.
officer of court of competent jurisdiction, that defendant is, 628, 629.
outlawry of defendant, of, 156, 631; of plaintiff, 630.
 amendment of, when permitted, 688 n., 703.
argument, not set down for, unless defective, 55, 692.
 form of, 688.
oath, put in without, 687.
outstanding terms, plea of none, in suit to restrain setting them up, 605.
overruling, 701 and n., 702 and notes.
 attachment, issue of, after, 701.
 costs on, 701.
 defence, how made after, 701, 702.
 partial demurrer, when by, 702; not by demurrer *ore tenus*, 588, 702.
 pleading *de novo*, after, 702 n.
 second plea, when by, 702.
 effect of, 701.

[The references are to the star paging.]

PLEA — continued.

- traversing note may be filed, after, 515, 701.
- by defendant, in or by his answer, 617 n.
- pains and penalties, on ground that discovery would expose defendant to, 610, 680.
- pais, of matter in, 665-680.
- paper on which written, 689.
- papers for use of court at hearing of, 693.
- parties, for want of, 290, 627 n., 638.
 - allowance of, 290, 291.
 - amendment of, when allowed, 708.
 - amendment of bill, after plea on ground of, 290, 698; second plea, 681.
 - form of, 682.
 - obviated, how, 290.
- partial, extent of, 583, 618, 683.
 - answer accompanying, extent of, 583, 584, 589, 618, 682.
 - exceptions to, 691, 760; when plea to relief only, 691, 760.
- (See EXCEPTIONS FOR INSUFFICIENCY.)
- oath, must be on, if accompanied by answer, 688.
- partly good and partly bad, may be, as to its extent, 610.
- partner, that plaintiff is not, 605, 619, 630.
- partnership, of none, in suit for partnership accounts, 605.
- payment, 669 n.
- peerage, by person having privilege of, put in on attestation of honor, 688.
- pendency of, when not an answer to motion for receiver, 1734; answer in support of plea, when necessary, 620.
- pendency of another suit for the same matter, of, 632-688, 632 n.
 - administration suit, in case of, 534, 535.
 - another country, must not be in, 633.
 - argument, not set down for, unless defective in form, 637, 692; but see 637 n.
 - averments in, 636, 637 n.
 - cross-bill, does not lie to, 638.
 - equity, must be suit in, 688.
 - inferior court, when first suit commenced in, 638.
 - inquiry into truth of, 637, 688, 692, 697.
 - proceedings upon certificate of result of, 638, 692, 697.
 - time for obtaining order for, 637.
 - dismissal of bill, on neglect to obtain, 637.
 - oath, not put in on, 638, 688.
 - unless pending in another court, 638 n.
 - parties, need not be between the same, 635.
 - replication to, irregular, 637, 695, 696; waiver of irregularity, 637.
 - second suit must be in same right as first, 635.
 - ship's accounts, in suit for, 635.
 - sufficient pendency of, what is, 635.
 - whole relief must be attainable in first suit, 632, 633.
 - whole matter, must be for, 632.
- person, to the, 627, 630-632; conclusion of, 685; definition of, 627, 630.
 - of defendant, 631, 632; of plaintiff, 631.
- petition of right, to, 132.
- practice in United States courts, 696 n.
- printing of joint plea and answer, 689.
- private act, of, 658; forms of, 658; must be upon oath, 658.
- Probate, Court of, of sentence of, 663.
 - foreign Court of Probate, of, 664.
- production of documents, not ordered after filing of affirmative plea, 1831.
- professional confidence, to discovery on the ground of, 680.
- protestation, in commencement of, 682.
- puis darrein continuance*, plea of, effect of, obtained by cross-bill, 607.
- purchase for valuable consideration without notice, of, 674-680, 2095 n.
 - answer in support of, 640, 678, 679.
 - answer in aid of, 615, 616.
 - applicable, when, 674.
 - averments in, 611, 612, 613, 675-678.
 - denial of notice, 614, 677; of fraud, 614, 677
 - payment of price, 677.
 - possession of vendor, of, 677.
 - reversion, of title to, 677.
 - seisin, of, 676; where fine pleaded, 677.

[The references are to the star paging.]

PLEA — continued.

- form of, 676-678.
- invalidity of, cured by filing replication, 695.
- legal title, to, 675.
- marriage settlement, pleaded as, 675.
- proof of, what is sufficient, 695.
- protection afforded by, 679.
- purchase deeds, must be stated in, 676.
- reasonable diligence in investigating title necessary, 674 n., 679.
- verdict, effect of adverse, upon, 979.
- record, of matter of, in Court of Equity, 659-661.
- record, of matter of, in a court not of equity, 682-685.
- recovery, of common, 682.
- release, of, 610, 688, 689.
 - account, to bill for, 689.
 - answer in support of, 615, 689.
 - averments in, 610, 689.
 - where consideration of, is impeached in bill, 689 n.
 - seal, must be under, 689.
 - set aside, in suit to, 605.
- release, of, in suit by husband and wife for separate estate, 109 n.
- relief, to, 625-680; good to discovery also, 625, 626 and notes.
- accompanied by answer to part of discovery, bad, 626.
- division of, 626.
- replication to, 694 n., 695, 829.
 - admission of its validity, 695, 696, 829.
 - allowance of plea, after, 789.
 - evidence, defendant must enter into, after, 697.
 - evidence, when plaintiff must enter into, after, 697.
 - irregular, when, 687, 695, 696.
 - time for filing, 696.
- undertaking to file, leave requisite for proceedings against defendant, after, 696.
- requisites, general, of, 683.
- review, to bill of, 1583.
- saving benefit of, to the hearing, 699; effect of, 699.
 - costs, in case of, 699.
- scandal in, 686.
- sergeant-at-arms, filing of plea irregular, after order for, 691.
- second, when allowed, 702.
- separate, to different parts of the bill, may be put in, 610.
- several pleas, 608.
- setting down, 692 and n., 693, 694 n.
 - (See SETTING DOWN.)
- signature of counsel to, 685; omission of, how rectified, 685.
- signature of defendant to, 689.
 - attestation of, when put in without oath, 689.
 - not required, when oath unnecessary, 689.
 - when dispensed with, by order, 689.
- single ground, defence must be reduced to, by, 607.
- splitting of causes, on ground of, 330 n.
- stand for answer, ordering to, 700, 701; effect of, 700.
 - costs, when ordered, 701.
 - directed, when, 699.
 - exceptions, in case of, 700, 761.
- stand over indefinitely, not allowed to, 694.
- stated account, of, 665-668, 2095 n.; in suit to set it aside. 616, 687.
 - answer in support of, 616, 667.
 - averments in, 612, 686.
 - delivery of mere, not sufficient, 686, rule among merchants, 686.
 - effect of plea of, 667.
 - errors excepted, effect of, 686.
 - final, must be, 665.
 - form of plea, 686.
 - release, not under seal, pleaded as, 686.
 - set it aside, in suit to, 605.
 - specific errors must be alleged and pointed out, 688 n.
 - signature not necessary, 686.
 - vouchers, delivery up of, averment of, 687.

GENERAL INDEX.

[The references are to the star paging.]

PLEA — *continued.*

- writing, must be in, 665.
- statement of matter pleaded, 682.
- statement of part of bill to which plea applies, 682.
- statute, of, 657, 658, 686; oath, must be on, 658.
- sufficiency of, how tested, 603 n., 692.
- sufficient, when, without setting down, 695.
- costs in such case, 696.
 - dismissal of bill thereon, 696; when irregular, 695.
 - sworn, 689, 830 n.; 848 n.
 - time for filing, 689.
 - answer, may be filed under order for time to, 690.
 - title of, what is, 681.
 - answer, when accompanied by, 682; when supported by, 688, 689.
 - averments in, 678.
 - form of, 673.
 - correction of misnomer in, 681.
 - female defendant, marriage of since bill filed, in case of, 681.
 - husband and wife, when put in by, 681.
 - joined with other defence, when, 788.
 - several defendants in case of, 681.
 - title, of, what is, 672, 673.
 - adverse possession, in case of, 672.
 - general allegation of disabilities, not sufficient to invalidate, 672.
 - title commenced before plaintiff's, must be shown, 673.
 - titles, of statute against buying and selling, pretended, 658.
 - oath, must be on, 686.
 - traversing note, leave required for plea filed after service of, 515, 691.
 - after overruling of plea, 516.
 - trial of writ of right, after bill filed, of, 606.
 - truth of, only questioned after replication, 697.
 - University, of the privileges of, 628.
 - unsound or weak mind, on behalf of persons of, put in by guardian *ad litem*, 753, 754.
 - untrue, found, defendant must give discovery, 697.
 - Westminster 2d, of statute of, 658.
 - whole case, must go to, 683.
 - will, of, 673; when not sufficient, 678.
 - withdrawal of, 693; costs on, 693

PLEADINGS,

- admissions and confessions must be noticed in, 855, 856.
- character of, determined by averments, 355 n.
- colonial court, filed or deposited in, proof of, 868.
- decree and orders no longer recited in, 1002.
- evidence not admitted of facts not noticed in, 861 n., 852, 853, 860.
 - exceptions, when pointed to general charge, 853.
 - inquiry as to, when directed, 327, 853 n., 855, 858, 859.
- exhibits, 881 n. (b).
- file, taking off, because scandalous, 785.
- foreign or colonial court, filed or deposited in, how proved, 868.
- impertinence to be avoided in, 318.
 - how taken advantage of, 850

(See IMPERTINENCE.)

- indorsement on, of name, residence, and place for service, 454.
- pertinent matter only to be inserted in, 813.
- perusal by counsel before signature, 318
- presumption against pleader, 549 n.
- printed copies, read at hearing, from, 981.
- reference to, in decrees and orders, 1002.
- right to production, how affected by, 1831.
- scandal to be avoided in, 313; how taken advantage of, 851.

(See EXCEPTIONS FOR SCANDAL SCANDAL.)

- settlement of, by counsel, costs of, 1439

PLENE ADMINISTRAVIT,

- creditor's action restrained after administration decree, though plea of, 148.

PLURIES DISTRINGAS,

- against corporation, to compel appearance, 477.

(See DISTRINGAS, WRIT OF.)

[The references are to the star paging.]

POLICY OF THE LAW,
admissions contrary to, not permitted, 849.

POSITIVENESS,
demurrer for want of, 360, 562; included in general demurrer, 587.

POSSESSION,
adverse, plea of, 672; form of, 673.
certainty required in bills for, and discovery of title deeds, 370, 371.
chattel real, of, how alleged, 362.
decree to deliver up possession of land, how enforced, 1062 n.
delivery of, of assigned land, in dower suit, direction for, 1166.
delivery up of, by writ of assistance, 1056, 1062, 1063.
delivery up of, enforcing, when directed by an award, 1866.
purchaser under a decree, when entitled to, 1279.
vendor's averment of, in plea of purchase for value without notice, 676.
writ of, 1062, n (a).

POST,
service of notice of the decree by, how authenticated, 435.

POSTEA,
certificate and indorsement on, after trial of issue, 11.

POVERTY,
executor, of, receiver not appointed in consequence of, 1722.
except in case of husband of executrix, 1722.
inquiry as to, when defendant brought up for want of answer, 500, 501.
on jailer's report, 502.

POWER,
married woman, vested in, parties to suit relating to execution of, 109 n.

POWER OF SALE,
executors with, when they represent *cestui que trust*, 222.
renouncing executors, who have not, necessary parties, 226, 227, 253.

POWERS OF PUBLIC BODIES,
excessive exercise of, restrained, 1650.

PRACTICE OF THE COURT,
how regulated, 1.
deviations from, consent, to, should be sanctioned by the court, when given on behalf
of infants, 74, 164.
lunatics, or persons of unsound mind, on behalf of, 86, 178.
married women, on behalf of, 113.

PRÆCIPÉ,
answer, for commission to take, 749.
official copy of, for, 757.
appearance, for entry of, 537 n.
separate, when required, 537 n.
plaintiff for defendant, by, 462.
assistance, for writ of, 1062.
attachment, for entry and filing of, 464.
answer, for want of, 489.
appearance, for want of, 464.
costs, for non-payment, 1453.
decree or order, for non-obedience to, 1045, 1046.

bill, on stamping copy of, for service, 442, on restamping same, 442.

distringas against corporation, for writ of, 477
distringas to restrain transfer, for writ of, 1692.

elegit, for writ of, 1063.

fieri facias, for writ of, 1063.

fieri facias de bonis ecclesiasticis, for writ of, 1065.

interrogatories, on stamping copy for service, 482 n.

memorandum of service of notice of decree, for entry of, 436 n.

ne exeat regno, for writ of, 1709

partition, for commission of, 1152, 1153.

sequestrari facias, for writ of, 1065.

sequestration, for writ of, 1050, 1051.

against corporation, for want of appearance, 478.

subpœna, for, 907.

costs, for, 1451 and n.

to hear judgment, 967.

venditioni exponus, for writ of, 1065.

[The references are to the star paging.]

- PRAYER OF BILL**, 325, 326, 355, 377-391, 1885 n.
 alternative, when permitted, 384.
 amendment of, when leave given at hearing for 383, 417, 418.
 demurrer for want of proper, 325, 557.
 discovery, of bill of, 1557.
 form of, 325, 328.
 formal parties, in case of, 358, 387, 388.
 general relief, for, effect of, 377, 378, 383, 557, 558.
 defects in specific prayer, when supplied under, 377-383.
 injunction, for, 387, 388.
 interpleader, of bill of, 1561, and n. (a).
 mistaken, redress given under, in case of charities, 13, 384.
 of infants, 73, 384.
 multifariousness in, 334 n., 345 n.
ne exeat regno, for, 358, 388, 389 n., 391 n., 1705.
 offer to do equity in, 385.
 partition, 1150 n. (a).
 perpetuate testimony, of bill to, 1572.
 process, for, abolished in England, 356; not in United States, 389, 1887 notes.
 subpoena, of, 389; what should contain, 391 n.
 may be omitted in New Hampshire, 389 n.
 bill defective for want of, in New Jersey, 389 n.
 form of prayer for, 388 n., 390.
 naming a person in bill does not make him party without praying
process against him, 390 and n.
 in United States courts, parties out of the jurisdiction, 391 n.
 in case of corporations, 391 n.
 Attorney-General, 391.
 provisional order, for, 388.
 receiver, for, necessary when appointment desired before decree, 1784.
 relief, for, addition of, to bill for discovery, not allowed, 408, 1559.
 review, of bill of, 1579; of bill in nature of bill of, 1581.
 specific relief, for, 328.
 defect in, when supplied under prayer for general relief, 377-391.
 waiver of penalty or forfeiture inserted in, 387.

PRELIMINARY ACCOUNTS AND INQUIRIES,

- directed, when, 987.
 class, as to, when directed, 990, 991.
 foreclosure suit, in, 998.
 next of kin, for, 990.
 persons interested, as to, 990.
 plaintiff's interest, as to, 991.
 specific performance suit, in, 987.
 order for, when made on motion, 991.
 defendant may prosecute suit after, 992.
 effect of, in administration suit, 992.
 stage of proceedings, at what, 992.
 injunction against creditor's action, not issued after order for, 1616, 1617.

PRESCRIPTION,

- variance, effect of, in suit for right founded on, 860.

PRESENTATION,

- ecclesiastical benefice, to, statutes of limitations applicable to, 654.
 injunction, when granted to restrain, 1652.
 second living, to, discovery as to, when not required, 569.

PRESUMPTIONS,

- double legacies, in cases of, 851 and n.
 insanity, in cases of, 851; lucid interval, when allegation of, 852.
 legitimacy, in cases of, 851.
onus probandi rests on party impugning, 851.
 pertinency, of, 849 n.
 stamp, 881 n.

PRETENCES,

- allegation of, in bill, 378

PRETENDED TITLES,

- plea of statute against sale of, 658, 686.

[The references are to the star paging.]

PREVIOUS SETTLEMENT,

effect on wife's equity to a settlement, 105.

PRICE,

payment of, averment of, in plea of purchase for value without notice, 677.

PRINCIPAL,

agent, when not necessary party to principal suit, 197.

necessary party, when not, to bill by agent, 197

necessary party to suit for contribution, unless insolvent, 270.

but plaintiff may elect then to make him a party, 271.

notice to agent, affected by, 674, 675.

surety, not necessary party to suit against, 267, 269.

unless he has paid part of debt, 269.

but owner of estate charged as collateral security is, 269.

PRINCIPAL AND AGENT,

accounts between, opened when, 667.

plaintiff's title in suits between, how stated, 321.

PRIOR INCUMBRANCERS,

(See INCUMBRANCES. PARTIES TO SUIT.)

PRIORITIES,

costs of suit to ascertain, 1890, 1424.

PRIORITY,

original suit over cross-suit, of, 1551; how lost, 408, 1551.

PRISON,

affidavits and answers of persons confined in, how taken, 745.

keeper of, to report prisoners confined for contempt, 502.

Whitecross Street, visitation of, 155, 502.

PRISONER,

affidavits of, before whom sworn, 745.

answer of, how taken, 745.

proceedings in default of, 492.

attachment against, direction of, 463; execution of, 466, 470, 1046, 1047.

bar of the court, proceedings to bring to, on return by messenger, 490.

sergeant-at-arms, by, 494; for non-obedience to order, 1049.

sheriff, by, 490.

(See BAR OF THE COURT.)

bill, service of, upon, 443 n.

contempt, for, proceedings to take bill *pro confesso* against, under statute, 492; under general orders, 522.

pauper, where a, 502.

contempt, for, discharge of, on submission to *pro confesso* order, 525.

contempt, for, in Whitecross Street, examination of, 502.

assignment of solicitor and counsel to, 503 and n.

contempt, for (not in Whitecross Street), report as to, by jailer, 502.

assignment of solicitor and counsel to, 503 and n.

detainer, against, lodging, by messenger, 490.

sergeant-at-arms, by, 494.

sheriff, by, 490

idiot, lunatic, or of unsound mind, appointment of guardian for, 503.

costs of, 503.

pauper, when a, 503.

pauper, answer of, proceedings in default of, 501.

assignment of counsel and solicitor to, 155, 500, 501.

discharge of, on filing answer, 501; costs of, 501.

witness, attendance of, how obtained, 909.

PRISONER OF WAR,

when he may sue, 49.

PRIVATE ACT,

plea of, 658; form of, 658; must be upon oath, 658.

proof of, on evidence, 862; where not printed, 862 n.

PRIVATE AFFAIRS,

discovery as to defendant's, need not be given, 719.

PRIVATE CONTRACT (SALE BY),

proceedings upon, 1292-1294.

[The references are to the star paging.]

PRIVILEGED COMMUNICATIONS,

case, on the ground that communication relates exclusively to the party's own, 579, 580.

answer, objection by, on the ground of, 716.

demurrer to discovery, on the ground of, 571, 581.

fraudulent transactions, communications relating to not privileged 578, 1835.

mercantile agency, 578 n.

patent office, 581 n.

plea to discovery, on the ground of, 680.

production, exemption from, on the ground of professional confidence, 1833, 1834.

that documents relate exclusively to defendant's own case, 1831.

professional confidence, on the ground of, 548, 570-579, 1833-1835.

public policy, 581 and n.

(See PROFESSIONAL CONFIDENCE.)

PRIVILEGED PERSON,

answer of, proceedings in default of, 496.

appearance of, proceedings in default of, 472-474.

costs, proceedings against, to enforce payment of, 1454.

decree or order, proceedings against, to enforce obedience to, 1044, 1066

discovery, bill of, proceedings to take, *pro confesso*, against, 497, 530, 1559.

effect of order, 631, 1559.

injunction or restraining order, proceedings against, for breach of, 1686, 1687.

pro confesso, proceedings to take bill against, 496, 522, 523.

sequestration against, answer for want of, 496.

appearance for want of, 472-475.

decree or order for non-obedience to, 1066.

injunction or restraining order for breach of, 1686, 1687.

(See SEQUESTRATION.)

solicitor, 1069 n. (a).

Trustee Acts 1850, 1852, orders against, under, 1067.

PRIVILEGES OF THE CROWN,

judicially noticed, 546.

PRIVITY,

between plaintiff and defendant must be shown, 322.

demurrer for want of, 328, 556

not destroyed by employment of agents or brokers, 325.

plaintiff claiming by, need not state title fully, 320

PRIVY COUNCIL,

colonial boundaries, has original jurisdiction in cases relating to, 20.

discovery, bill of, in aid of proceedings before, 1556.

proclamation, order, or regulation of, proof of, 868.

PRIZE (COURT OF),

demurrer, because subject within jurisdiction of, 553.

PRIZE-MONEY,

one of ship's crew may sue for, on behalf of self and others, when, 239.

PROBATE,

allegation of grant of, obviates demurrer, but not plea, 319.

allegation of grant of, necessary in bill by executor, 318; unless bill to protect estate, 318

unnecessary in bill against executor, 319.

equity jurisdiction in matters of, 553 n., 663 n.

foreign, payment out not ordered on, 1809

grant of, need not be alleged in bill against executor, 319.

insufficiently stamped, no decree till defect remedied, 319.

left on bespeaking order for payment to executor, 1000, 1808

plea of, 663; where fraud alleged in obtaining will, 663, 664.

foreign, of, 664.

will of real estate, of, in solemn form, conclusive, 877

PROBATE (COURT OF),

administrator, *pendente lite*, appointment of, by, 204, 251.

appeal from, receiver, when appointed, pending, 1726.

costs in, postponed to costs in Court of Chancery, 1411.

demurrer that it is proper tribunal, 553.

discovery, bill of, in aid of proceedings in, 553, 1557

injunction to restrain proceedings in, when granted, 1625.

judgment of, plea of, 668

[The references are to the star paging.]

PROBATE (COURT OF) — *continued.*

litigation in, receiver, when appointed, pending, 1726.
real estate, proof of will of, in, 232 n., 876.
receiver, appointment of, by, 1725 n.; pending appeal, 1726 n.

PROCEEDINGS,

abandoned, costs of, 794, 1880.
receiver, by, not allowed, 1747.
stay of subsequent proceedings for same object until payment of, 796, 1880.
abatement, effect of, on, 1542-1544.
chancery, in, how proved, and when admissible in evidence, 688, 867, 871
 office copies, read from, 871.
indorsement on, of name, residence, and place for service, 453, 454.
judicial or legal, of colonial or foreign courts, how proved, 863.
leave to attend, party served with notice of the decree may obtain, 436, 437.
 further consideration, service on, of notice of setting down cause on, 1872.
order for, how obtained, 837.
 copy for Chambers, 437.
 service of, 437; evidence of, 436.
 evidence of identity of person obtaining, 437.
leave to attend, when given to assignee *pendente lite*, 281 n., 1517.
leave to attend on sale, at instance of judgment creditor, 1038.
misrepresentation of, punishment for, 1069, 1070.
pauper, on behalf of, signature of his solicitor to, 41.
proof of, at law, different in civil and criminal cases, 872.
publication of, while causes pending, a special contempt, 1069, 1070.
service of, in matters of contempt, must be personal, 453.
 in other cases, how effected, 453, 455, 456.
 on defendant not duly appearing, 456.
 on persons not parties, 456.
service of, time for, where personal service necessary, 455 n.
 where not, 455, 456.

PROCESS,

application relating to, usually made by motion, 1588.
contempt of, best endeavor to execute must be used, 462, 465.
 discharge for irregularity, application for, how made, 510.
 when it must be made, 512.
 vitiated by irregularity in affidavit of service, 898.
county into which it must be made out, 463.
irregularity in, when waived by entry of appearance, 512.
 (See CONTEMPT. IRREGULARITY.)
prayer for, 355, now omitted from bill, in England, 389 n.
 may be omitted in New Hampshire, 389 n.
bill defective for want of, in New Jersey, 389 n.
form of prayer for, 390.
naming person in bill does not make him party without praying process against
 him, 390 and n.
in the United States courts, parties out of jurisdiction, 391 n.
in case of corporations, 391 n.
 Attorney-General, 391.
revivor and resumption of, after abatement, 1545.
unexecuted, may be abandoned, 462.
in favor of person not party, under order, to enforce obedience, 1048 n.
 vitiated by irregular affidavit of service, 898.

PROCESS-SERVER,

punishment for using violence or abusive language to, 458 n., 1069.

PROCHEIN A.M.I. (See NEXT FRIEND.)

PROCLAMATION,

British colony or foreign state of, how proved, 862.
judicially noticed, 546; how proved, 863.

PRO CONFESSO, 517-531, 1002 n.

absconding defendant, taking bill against, under statute, 458, 518.
 order, how obtained, and necessary evidence, 506.
 under general order, 458-459, order, how obtained, and necessary evidence,
 458-460.
 advertisement of notice, 520; effect of giving excessive time, 521.
admission, bill taken, when read as, 531, 838 n., 1569.
advance of, bill ordered to be taken, 973.

[The references are to the star paging.]

PRO CONFESSO — continued.

- amended and original bill taken together, 401.
- amended bill, proceedings to take, 523, 524.
- amendment of bill, proceedings, when vitiated by, 410 n., 425, 510, 522.
 - when not, 425, 510, 522.
- answer, effect of filing of, on notice of motion to take, 521.
- answer, mere filing of, order not discharged upon, 523.
- answer, leave for, where decree not absolute, 527.
 - defendant let into answer, after decree, when, 524 n.
- answer to part only, may be taken as confessed in other parts, 524 n.
- appearance, for want of, bill taken, when, 457, 518.
 - order for, how obtained, and necessary evidence, 456.
- appearance, proceedings after entry of by defendant, 520.
- Attorney-General, when bill taken against, 497, 523.
- Chambers, proceedings in, on decree, when and how taken, 528.
- corporation aggregate, proceedings to take bill against, 523.
- custody, defendant in, proceedings to take bill against, under statute, 491, 502;
 - time for proceedings, 492.
- general orders, under, 522.
 - pauper, where a, 502.
- day for hearing, bill to be taken, 518, 972, 973.
- day for motion to take bill, 519 n.
- decree, nature of, 526, 528.
 - absolute, when, 527, 529 n.
 - entry of, 527.
 - final, order required by, when, 518, 526, 998.
 - not absolute, no proceeding to be taken under without leave, 527.
 - passing, 527.
 - recitals of, effect, 517 n.
 - service of decree, 527; and notice where decree not absolute, 527; time to be inserted in notice, 527 n.
 - application to dispense with, when made, 528.
 - time for making decree absolute, 528; motion to make, 528.
 - discovery, taking bill of, against privileged defendant, 497, 530.
 - application, how made, and evidence, 497, 530.
 - due diligence to execute process to be used where bill to be taken, 465.
 - effect of taking, 497, 531, 532 n., 1559.
 - enrolment of decree taken, when vacated, 529, 1025, 1028.
 - foreclosure, final order for, when made after bill taken, 528 n.
 - hearing cause, 525 and n.
 - appearance of defendant at hearing, on what terms permitted, 526.
 - bill read from authenticated copy, 526.
 - effect of the decree, in the hearing, 525 n.
 - what open to the defendant, 525 n.
 - cause proceeds *ex parte* after, in United States courts, 525 n.
 - neglect to answer admits, what, 525 n.
 - how far plaintiff must prove his case, after such decree, 525 n., 531 n.
 - husband, bill taken against, 523.
 - immediate, order to take bill, not usually made, 521.
 - insufficient or irregular answer, no answer for purpose of taking bill, 523.
 - interpleader, bill of, may be taken, 150.
 - interrogatories, must have been filed, 451, 520.
 - delivery of, dispensed with, when, 520.
 - issue, when taken, 1114.
 - jurisdiction, attachment not necessary in order to take bill against defendant out of the, 465 n., 521.
 - jurisdiction, how taken against defendant going out of, after service, 519 n.
 - Law, bill so taken, cannot be as evidence at, 530 n.
 - married woman's inheritance, bill relating to, not taken against her, 185.
 - misdemeanor, bill how taken against defendant in jail for, 498.
 - motion to take bill under general orders, 519, 520, 522.
 - answer filed after notice of, effect of, 521.
 - evidence on, 521.
 - saving, 521
 - time for, 521.
 - motion for decree, cause heard on, as to other defendants, 761 n.
 - non est inventus*, taking bill after return of, 494, 495.
 - opened, how, 524 n., 1031 n.
 - papers to be left on bespeaking minutes, 1010.

[The references are to the star paging.]

PRO CONFESSO — continued.

- pauper prisoner, proceedings to take bill against, 502.
- payment, order for, when made, 527.
- practice as to, in United States courts, 518 n., 529 n.
 - in New Hampshire and Tennessee, 518 n.
 - in Massachusetts and Maine, where defendant is residing out of State, 518 n.
 - in New Jersey, 519 n.
 - in foreclosure suits, 581 n.
- preliminary order, 517-525.
 - how obtained, 518-523; discharge of, on what terms granted, 524.
 - prisoner for felony, proceedings to take bill, against, 493.
 - prisoner for misdemeanor, proceedings to take bill, against, 493.
 - privileged defendants, against, on sequestration absolute for want of answer, 496, 523; application, how made, and evidence, 497.
 - proceedings under decree, defendant cannot attend without leave, which is granted only on terms, 1175.
 - process to enforce decree, when leave required for, 827.
 - receiver, appointment of, when bill taken, 527.
 - no proceeding to be taken on, without leave, 527.
 - rehearing of cause, on what terms granted, 528.
 - replication, filing, when bill taken against some defendants, 832, 833.
 - separate, after bill taken, 529.
 - representatives of parties, how far bound by decree, 529.
 - restitution, security for, when required, 527.
 - restoration of cause set down to be heard, when permitted, 521.
 - review, 1576 n. (a).
 - sequestration, issue of, when bill taken, 494, 495, 527, 1081.
 - no proceeding to be taken on, without leave, 527.
 - service of decree, 527; and notice, where not absolute, 527.
 - time inserted in notice, 527 n.
 - application to dispense with, when to be made, 528.
 - setting down cause, 518, 966.
 - strictness required in proceedings, 522.
 - submission to order, by defendant in custody, proceedings upon, 525.
 - subpoena to hear judgment, not necessary, 967.
 - summons to proceed, service of, when necessary, 528.
 - time for obtaining order to take bill against defendant in custody, 492.
 - waiver of process to take, what is, 524.
 - wife, when bill may be taken against, 185, 523, 524.

PRODUCTION OF CESTUI QUE VIE (See CESTUI QUE VIE.)

PRODUCTION OF DOCUMENTS, 1817-1839.

- abroad, practice when documents are, 1827.
- admission in answer, affidavit when allowed to explain, 1824.
- affidavit as to, form of, 1820-1822, 1829 n.
 - (See AFFIDAVIT.)
- agent, when in possession of, 1825; when wrongfully withheld by, 1826.
- agent, communications from, 1834 n.
- amendment of bill, effect of, on the right to production, 1829.
 - application not waived by, 1821.
- answer, sufficiency of, not admitted by application, 1821.
- answer, practice where application made on admission in, 1819, 1820, 1828.
- appeal from order for, production not ordered during pendency of, 1837 n.
- appeals to House of Lords, at hearing of, 1499.
- application for, how made, 1820.
- application for, when not an answer to motion to dismiss for want of prosecution, 809.
- attachment for non-production, issue of, 1839.
- Chambers, application for, made at, 1820.
- claimant under decree, to and from, 1176, 1177, 1820 n., 1825.
- co-defendant, cannot be required from, before decree, 1824.
- copies of documents produced, charges for, 1836.
- corporation aggregate, by, affidavit of, by whom made, in case of, 1820.
- costs on, 1836.
- covenant for production, when ordered against person holding, 1826, 1827.
- criminal charge, objection, because it would expose party to, 1835.
- cross-bill, obtainable from plaintiff without, 1555, 1818.
- cross-examination on affidavit as to, not allowed, 888, 1823.

[The references are to the star paging.]

PRODUCTION OF DOCUMENTS — *continued.*

- decree, not ordered, when it would be equivalent to, 1829.
- or where documents not wanted for purposes of, 1830.
- delay in making application, effect of, 1821.
- delivery up of documents, in suits for, 1829.
- demurrer to whole bill, not ordered after filing of, 1831.
- description of documents, what is sufficient, 1822, 1828.
- evidence in support of application, 1821, 1822.
- evidence, documents not made, by order for, 1837.
- exceptions for insufficiency, after successful, 1821.
- extent of right to, 1817.
- filings of bill, not ordered of documents parted with since, 1827.
- forfeiture, objection to, because it would expose party to, 1835.
- greater certainty, effect of reference to, for, on right to, 1832.
- hearing, how obtained after, 1825.
 - before, 885 n.
- heir, right to, of disinherited, 1839 n.
- informality or insufficiency of affidavit, practice in case of, 1828.
- information, party to produce, must seek for, 1822.
- information obtained by, publication of, or use for collateral purposes, restrained, 1837.
- injunction, refused, pending application for dissolution of, 1678.
- interlocutory orders for, principles on which made, 1829.
- interrogatories, application for, how made in case of unanswered, 1831.
- issue, at trial of, 1118.
 - autre droit*, when held in, 1113.
 - order for, necessary, 1118.
 - person not a party but attending, by, 1119.
 - joint possession, not ordered of documents in, 1826.
 - letters between party and stranger, of, when ordered, 1837.
 - between agent and party, 1834 n.
 - mortgagee, by, when directed, 1835.
 - next friend, cannot be required from, 1824 ; except when, 1825 n.
 - objection to, how made, 1822, proceedings where invalid, 1822.
 - omission from affidavit, practice in case of, 1824.
 - order for, form of, 1820 ; effect of, 1837.
 - examination of witnesses and hearing, extends to, 1837.
 - how enforced, 1839 ; affidavit of service of, 1823 n.
 - privileged documents, in case of, 1844.
 - partition, under commission for, 1154.
 - partnership between solicitors, in suit for account of, 1827.
 - party to the suit, in possession of, though not belonging to him, 1827.
 - penalty, objection to, because it would expose party to, 1835.
 - place at which ordered, 1836.
 - plaintiff, by, defendant entitled to, when, 1819.
 - answer, not usually ordered before, 1819, 1820.
 - cross-interrogatories, when filed to procure, 1824 n.
 - dismissal of bill, in default of making, 742.
 - obtained, how, under former practice, 1819 ; under present practice, 1819.
 - time for application, 1819, 1821
 - time to answer, when enlarged till after the production, 1819.
 - plea and answer, practice when application made after, 1831.
 - plea, not ordered after filing of affirmative, 1831.
 - pleadings, how affected by state of, 1831.
 - possession, answer or affidavit only received as evidence of, 1823, 1828.
 - admission of, after, special grounds must be shown for non-production, 1828
 - sufficient, what is, 1825.
 - possession of stranger, in, when production ordered, 1827.
 - professional privilege, exemption on account of, 1838, 1844.
 - (See PROFESSIONAL CONFIDENCE.)
 - Record and Writ Clerks' office, where deposited in, how obtained in the court or its offices, 872, 1838, fees on, 872 n.
 - elsewhere, 872, 1838 ; fees on, 872 n.
 - order not made if certified or examined copy sufficient, 872.
 - redemption suit, in, not ordered before decree, 1835.
 - reference by answer to document, effect of, 1832.
 - relators, how obtained from, 1825.
 - relevancy, admission of, sufficient to give right to production, 1828; 1829.
 - unless documents not material, 1829.

[The references are to the star paging.]

PRODUCTION OF DOCUMENTS — *continued.*

- sealing up, when permitted, 896 n., 1824.
- portions relating exclusively to respondent's title, 1831.
- proceedings, where suspected to extend to relevant matter, 1824.
- set aside instrument, in suit to, 1880.
- when deed itself alleged to contain evidence, 1820.
- solicitor, when in possession of party's, 1827.
- solicitor, lien of, ordered notwithstanding, 1827.
- solicitors in partnership, in suit between, 1827.
- solicitors and agents, who entitled to inspect as, 1886.
- special agent, not made to, without special order, 1887.
- summons for, form of, 1820; by claimant under decree, 1820 n.
- telegrams, 907 n.
- title, relating exclusively to respondent's, not ordered, 1831, 1882.
- mode in which objection must be raised, 1831.
- trustee, by, not ordered in absence of *cestui que trust*, 1827.
- undertaking to make, extends to solicitors and agents, 1837.

PRODUCTION OF TITLE DEEDS,

- incumbrancer consenting to sale, by, 1285.

PROFESSIONAL CONFIDENCE,

- demurrer to discovery on the ground of, 570–579.
 - allowed, though no demurrer to relief, 548.
- demurrer by witness on the ground of, 942.
- objection on account of, raised by answer, 716.
- plea to discovery, on the ground of, 680.
- privilege arising from, 570–579.
 - history and origin of, 571, 572; belongs to client, 574.
 - qualified in the case of client, 571, 572, 576–578.
 - secus, in the case of legal adviser, 578.*
 - does not cease on solicitor becoming interested, or his being struck off rolls, 577.
 - extends to counsels' briefs, how far, 571.
 - agents between solicitor and client, 578.
 - cases for counsel's opinion, when, 570–573, 1834.
 - clerks of counsel or solicitor, 576.
 - communication with solicitor before dispute, when, 572, 573.
 - foreign legal agent, 577, 1833 n.
 - interpreter, 576.
 - professional communications of any kind with legal adviser, 578.
 - representative of client, 576.
 - short-hand writer's notes, 571 n
 - solicitor subsequently becoming interested, 577.
 - what it does not extend to, 574, 575, 578.
 - communications, by third parties to solicitor, 574.
 - not strictly professional, 575.
 - communications, to members of other professions than the law, 576.
 - to agents or stewards, 576.
 - to conveyancers, 576.
 - by other parties to the suit, 576, 577.
 - person consulted as a legal practitioner, but not really such, 576.
 - legal adviser a party to the transaction, where, 576.
 - illegal purpose, communication made in order to effect, 578.
 - knowledge of, not gained professionally, 575.
 - party to a fraud, 578.
 - foreign legal adviser, extends to case of, 577, 1834 n.
 - fraud, exception where solicitor party to, 1835.
 - letters between client and his solicitor, 1834.
 - client or solicitor and unprofessional agent, 1834.
 - exception, plaintiff and defendant jointly interested, 1834.
 - party must swear to his relief in validity of objection, 1834.
 - production, exemption from, on the ground of, 1838, 1834.
 - briefs, and notes thereon, of, 1834
 - except indorsement of order of matter *publici juris*, 1834.
 - cases and opinions of counsel, of, 1834.
 - exception where plaintiff and defendant jointly interested, 1834.
 - or in suits between trustee and *cestui que trust*, 1834.
 - letters, of, 1833, 1834.

[The references are to the star paging]

PROHIBITION,

proceedings on, not restrained, unless applicants plaintiffs in equity, 1620.

PRO INTERESSE SUO. (See INTERESSE SUO, EXAMINATION PRO.)**PROMISE,**

limitations, statute of, what sufficient to take case out of, 646.
in simple contract case, 646.

PROMISSORY NOTE,

exhibit, provable as, at hearing, 881.

interest allowed on, 1257.

married woman, given by *dum sola*, effect of husband's bankruptcy on, 116 n.

married woman, given to, effect of, 116.

payment of part to her husband, effect of, 116.

release of, by husband, effect of, 122.

negotiation of, when restrained, 1651.

application usually made *ex parte*, 1651.

forged indorsement, in the case of, 1651.

perpetual, made at hearing, 1680.

one maker of joint and several, sued without the others, 267 n.

PROOF,

in bankruptcy, by husband of debt due to wife, not a reduction into possession,
118.

will, of, must be stated by executor plaintiff, 318; how alleged, 318.

unless bill filed to protect property pending grant, 318.

PROPERTY (MANAGEMENT OF). (See MANAGEMENT OF PROPERTY.)**PROPRIETORS,**

institution, of an, one may sue on behalf of self and others, when, 241.

not if dissolution sought, 241.

trading concern, of a, when one allowed to sue for self and others, 238.

PROROGATION OF PARLIAMENT,

appeal to House of Lords not affected by, 1486.

judicially noticed, 546.

PROSECUTION,

dismissal of bill for want of, 659 n., 794 n., 801-812.

(See DISMISSAL OF BILL FOR WANT OF PROSECUTION.)

PROSECUTION (CRIMINAL),

demurrer to discovery that would expose defendant to, 563.

exceptions, 566.

conspiracy, cases of, 566.

fraud, cases of, 566.

statutory, 566; fraudulent trustee, 566; infringer of trade-mark, 567.

protection against discovery tending to establish, cannot be waived, 566.

wife not bound to discover what would expose husband to, 184, 564.

PROSPECTIVE ORDER,

payment into court, when made, 1786.

payment out, for, when made, 1798.

PROSPECTIVE SUM,

power of attorney may be extended to, 1802.

PROTECTION ORDER,

description of wife who has obtained, 179 n.

effect of, on right to sue on wife's *chose in action*, 87, 110 n., 122 n., 123 n.; on wife's reversion, 123

wife who has obtained, sues and sued without husband, 87, 110 n., 178, 754.

PROTESTATION,

demurrer, in, 585.

plea, in, 682.

PROTESTATION OF HONOR. (See HONOR, ATTESTATION OR PROTESTATION OF)**PROVINCES,**

boundaries of colonial. Attorney-General necessary party to suit as to, 136.

division of England into, judicially noticed, 546.

PROVISIONAL ORDER,

prayer for, 888.

[The references are to the star paging.]

PROVISO,
record for trial of issue, carried down by, when, 1114.

PUBLIC COMPANY. (See **COMPANY, PUBLIC.**)

PUBLIC INTEREST,
demurrer on the ground that discovery would be against, 581.

PUBLIC OFFICER (OF JOINT-STOCK COMPANY),
affidavit of no collusion in interpleader suit, form of, by, 1562.
change of, new name, how substituted, 25.
death of plaintiff, no abatement, 25 n., 818.
dismissal of bill upon, 813.

suit against, 147.
by, 25; against directors in respect of past transactions, 25.

PUBLIC PURPOSES,
property appropriated to, information respecting, when proper, 8.

PUBLIC-RECORD OFFICE,
office copy of record in, provable as exhibit at hearing, 882.

PUBLIC WORKS,
papers left on bespeaking minutes of order dealing with fund paid in under statute authorizing, 1011.

PUBLICATION, 945.
what is, 945 and n.
rule as to in United States courts, 945 n.
rule to pass, 946.
to produce witness, 946.
application to enlarge, 946, 947 n.
meaning of enlarging, 947 n.
after one order of enlargement, 947.
when commission sought to be made returnable after ordinary time of, 947.
where cross-bill filed, 948.
in a cross-cause, 948.
after it has passed, 948.
when motions, for enlargement of, should be made, 948 n.
on affidavit, 948 n., 949.
enlargement on untrue allegation, informal, 949.
commission granted, after, 949.
order for enlarging, how made and served, 950.
after enlargement, other party may cross-examine and examine at large, 950.
adjournment of cause in consequence of, 950.
how adjournment procured, 950.
interrogatories annexed to copy of depositions, 950.
examination of witnesses, after, 955.
must be by special order, 955.
unless merely to prove exhibit, *viva voce*, 956.
in what cases granted, 956 and n.
upon reference to a Master, 956.
to discredit another witness, 957 and n.
upon articles previously filed, 957.
form of articles, 957.
use of articles, 958.
impertinent, if without articles, 958.
motion for order of leave, to examine, to credit, special, 958.
commissions, 959.
nature of examination permitted, 959, 960 n.
particular facts, not in issue, 960.
articles never allowed as to competency, 960.
form of interrogatories, 961.
service by, 149 n.

PUIS DARREIN CONTINUANCE,
plea of, effect of, obtained by cross-bill, 606, 607.

PUNISHMENT,
demurrer, for that evidence would expose witness to, 942.
demurrer to discovery that would expose defendant to, 548.
discovery that would subject defendant to, not required, 564.
exceptions, 565, 567.
for felony, endured, effect of, 58.

GENERAL INDEX.

[The references are to the star paging.]

PUNISHMENT — *continued.*

married woman need not give discovery that would subject husband to, 564.
plea to discovery that would expose defendant to, 680.
production, objection to, on ground that it would expose party to, 1835.

PURCHASE OF LAND,

investment in, 1339–1342.

(See INVESTMENT IN PURCHASE OR ON MORTGAGE OF LAND.)

PURCHASE FOR VALUABLE CONSIDERATION, WITHOUT NOTICE,

benefit of defence of, insisting on, by answer, 714, 715.

co-defendant, as against, 674 n.

cross-bill, not good ground for filing, 674 n.

defence on the ground of, how pleaded, 569 n., 674, 679, 712.

defence on the ground of, by answer, does not relieve defendant from obligation to
answer fully, 720, 721

demurrer on the ground of, 589, 674 n.

limitations, statute of, application in cases of, 649.

marriage settlement equivalent to, 675.

if postnuptial, antenuptial agreement must be shown, 675.

onus probandi, in cases of, 698, 849.

plea of, 611–613, 673–680.

discovery, to bill of, 674 n., 675 n.

equitable title, 675 n.

answer in support of, 618, 678, 679.

denial of notice by, 677, 678.

documents, as to, 678.

fraud, as to facts charged as evidence of, 678.

necessary, when, 619.

averments in, 611, 613, 614, 676–678.

denial of notice, 678, 679. of fraud, 678.

payment of price, 677.

possession of vendor, 677.

reversion, of title to, 677.

seisin, of, 676.

form of, 676–679.

(See PLEA.)

purchaser, with notice, from purchaser without, may set up defence of, 674.

reply of, 645 n. (a).

PURCHASE-MONEY,

income tax, when deducted from, 1278 n.

incumbrances, payment off of, out of, 1278.

lien of purchaser on, till conveyance, 1279.

papers left on bespeaking order dealing with, 1011, 1872.

payment of, on investments by the court, 1842.

payment of, in specific performance suit, enforcing, 1220

payment into court, order for, how obtained, 1276.

who may appear on application, 1270.

several purchasers may join in one application, 1278.

but joint purchasers cannot sever, 1278.

substitution of purchaser, 1285.

payment in, order for, on default of purchaser, 1282.

payment in, without prejudice, 1278.

payment out of, notice to purchaser of application for, 1278, 1279.

restraint on, in favor of purchaser, 1278.

effect given to, how, 1278.

return of, on discharge of purchaser, 1292.

unpaid, lien for, parties to suit to establish, 1653 n.

unpaid, lien for, declaration of, in specific performance suit, and sale to realize, 1220 n.

PURCHASER,

conveyance of legal estate, of property sold in lots, to suit for, 219, 220.

co-plaintiff with settlor, should not be, in suit to avoid settlement, 234.

death of, parties to suit for specific performance, in case of, 285.

different parts of estate from beneficiaries, of, legal estate being outstanding.

whether necessary parties, 219.

discharge of, in specific performance suit, where title defective, 1218.

judgment-creditors of, not necessary parties to bill against, for specific performance,

279.

lease, of, necessary party to lessee's suit for license to assign, 278.

[The references are to the star paging.]

PURCHASER — continued.

mortgagee, from, necessary, party to suit to set purchase aside, 279.
 mortgagor, from, account directed against, though not prayed, 880, 881.
 payment into court by, when directed, 1774–1776, 1782.

(See PURCHASE-MONEY.)

pendente lite, not necessary party, unless conveyance required, 281.

made party by supplemental proceedings, 281.

receiver at instance of, 1720.

several of distinct lots, bill for specific performance against multifarious, 885.
 bill by, multifarious, 344.

subject to charge, necessary party, to suit to realize incumbrance, 278.

subject to charges, receiver, when appointed against, 1724.

PURCHASER (UNDER DECREE).

acceptance of title by, what is, 1277.

annuity of, from what period interest payable by, 1277.

appeal by, 1461.

regarded to some extent, as party to suit, 1061 n.

benefit of, purchaser, when entitled to, 1274, 1276, 1277.

compensation, when payable to or by, 1283 and n.

amount of, how determined, 1283 n.

complete, when compellable to, and entitled to, 1274.

conveyance to, settlement and execution of, 1279–1281; affidavit of, 1011, 1374.

(See CONVEYANCE.)

costs of, 1276, 1285 n., 1372, 1373; on opening biddings, 1292.

resale, 1290 n.

(See RESALE.)

deficiency on resale when charged on, 1282 n.

delivery of abstract to, how compelled, 1216, 1275.

discharge of, when directed, 1282, 1288.

application for, how made, 1281.

error, where material in the proceedings, 168.

insanity, in case of, 1282.

misrepresentation of person or solicitor conducting sale, on ground of, 1284 n.

mistake, on ground of, 1284 and n.

purchase inequitable, where, 1284.

return of purchase-money or deposit upon, 1284, 1285.

unsubstantial person, when a, 1281.

further consideration, notice of setting down cause to, 1372.

affidavit of service of notice, 1372, 1374, 1803.

heir of, allowed benefit of contract, 1283.

incompetent, discharge, 1281.

insane, discharge of, 1282.

investigation of title by, 1275, 1276.

irregularity in decree, not affected by, 1276.

but must see that sale is according to decree, 1275.

liability of, 1275.

life estate, of, when bound by agreement to purchase, 1275 n.

life estate, of, from what period interest payable by, 1277.

motion by, 1591.

opening biddings, 1285 and n., 1286–1292.

former practice as to, opening biddings discontinued in England, 1285 n.

payments in, of purchase-money by, 1276, 1278, 1282.

possession, when, entitled to, 1279; where no time fixed, 1276, 1277; rent, 1277 n.

delivery of, to, how enforced, 1062.

when he takes, without order, 1277.

of reversionary interests, 1277.

of life interest in funds, and annuities, 1277.

representatives of, sale not enforced against, without suit, 1288.

resale by, before certificate absolute, payment of profit made on, 1285.

reversion of, from what period interest payable by, 1277.

substitution of, 1285.

application for, how made, evidence, 1285.

title deeds, delivery of, to, 1280.

lots, when sale in, 1280.

PURPRESTURE,

definition of, 1638.

information against, 10 n.

injunction against, 1636.

[The references are to the star paging.]

QUAKER,

affirmation of, how taken, 898.
answer of, how taken, 746.

QUASI PARTIES,

appeals by, in Court of Chancery, 1362, 1460, 1479.
House of Lords, to, 1491.
creditors proving under decree are, 685.
purchasers under decree, 1061 n.
motion, may be made by, 1591.

QUEEN,

accession of, date of, judicially noticed, 546.
Attorney-General, sues by, 7; is sued by, 130, 135, 136.
bill, when addressed to, 2, 357.
birth-place of alleged alien, may sue for discovery of, 5.
costs, entitled to, when, 11, 12, 132.
not liable for, 12.
exceptions, revenue cases, 12.
petition of right, 12 n., 132.
succession duty, in cases relating to, 12 n.
court, may sue in any, 5.
law or equity, may sue at, 5.
petition of right, when suit against by, 181.
privileges and proclamations of, judicially noticed 546.
Solicitor-General, when represented by, 140.
suits against, 130-140; on behalf of, 6-16.
waste, when restrained at suit of, 5.
(See ATTORNEY-GENERAL. CROWN. INFORMATION. RIGHT, PETITION OF.)

QUERIED ITEMS,

proceedings upon, in Master's office, 1227.

QUESTION OF FACT. (See FACT, QUESTION OF.)

QUIA TIMET,

bill, when and for what purposes, sustainable, 1961 n., 2040 n.
to remove cloud from title, 1961 n.
to obtain surrender and cancellation of deeds, &c., 1961 n.
to prevent acquisition of claim, &c., 1961 n.
to set aside discharge of a mortgage, 1961 n.

QUIETING TITLE,

bill for, 557 n., 860 n., 1688 n., 2040 n.
decree, 991 n.

QUIT-CLAIM,

does not affect purchase for value, 874 n.

QUOTATION,

indication of, in affidavits, 895.

QUO WARRANTO,

demurrer to discovery which would expose defendant to, 567, 568.

RAILWAY COMPANIES,

amalgamation of, continuation of suits in case of, 1518.
injunction to restrain violation of covenant by, 1650.
receiver of tolls of, appointed, 1781; in specific performance suits, 1729
receiver and manager of, when not appointed, 1731 n.
when appointed, 1731 n.
restrained in use of locomotives dangerous to buildings on the line, 1650 n.

RAILWAY TOLLS,

receiver of, appointed, 1731.

RAISING MONEY (BY SALE OR MORTGAGE), 1344-1346.

amount required, stage of cause at which ascertained, 1344.
application thereof, when raised, 1345.
conveyances by infants or limited owners, 1345.
costs, for payment of, 1433-1456.
surplus of amount real property, 1345.

[The references are to the star paging.]

RATES (PAROCHIAL),

futuro, in, receiver of, not appointed, 1731.

REAL ESTATE,

administration of, not ordered in single creditor's suit for his own debt, 236, 237 n.
charge on, parties to suit to establish, 262, 284.

discovery of proceedings on grant of administration, need not be given in suit for,
 administration of, 570.

judgment creditors, remedy against, 1036.

legacies charged on, legatees necessary parties, 225.

legacy charged on, administration decree on application of one legatee, 218, 225, 433.
married woman, of, she is not a necessary party to bill to charge husband's interest
 in, 189 n.

revivor by common order, of suit relating to, 1525.

sale of, proceeds of, administration decree on application of one person interested
 in, 218, 225, 433.

sequestration, effect of, on, 1056, 1057.

RE-AMENDMENT OF BILL. (See AMENDMENT OF BILL.)**REBELLION (COMMISSION OF),**

abolished, 1048 n.

REBUILD,

forfeiture on breach of covenant not to, relieved against, 1650.

RECALLING WITNESS,

on trial of question of fact, 1104.

RECAPTURE,

on Sunday, not void, 487.

RECEIPT,

exhibit, provable as, at hearing, 882.

secus, if cross-examination upon admissible, 882, 883.

husband or his agent, by, a reduction into possession, 117.

thirty years old, proves itself, 873.

RECEIVER, 1715-1769.

abatement, effect of, on, 1544.

accounts of, 1752-1764.

allowance of, certificate of, 1753.

copies of, furnishing, 1752.

costs of passing, 1753 n.

entry and verification of, 1753.

exceptions to, 1809 n.

fees, on allowance of, 1753 n.

form of, 1752.

leaving, 1752; how compelled, 1754.

neglect in leaving, or attending to pass, penalty for, 1753, 1755, 1756.

passing after death of receiver, 1757.

summons to proceed on, 1752.

surety allowed to attend passing, when, 1767.

vouched, how, 1751, 1753; unvouched payments disallowed, 1753.

accumulating fund, appointment for purpose of, 1724.

action, defence of, by, leave necessary for, 1749.

 costs of unsuccessful, allowed though not sanctioned, 1750.

administration (limited), when appointed after grant of, 205.

ancillary, 1716 n. (a), 1735 n. (a), 1765 n. (a)

annuitant with power of entry, not appointed at instance of, 1724.

annuity charged on real estate, 1724.

answer, when appointed before, 1784 and n.

answer treated as affidavit, on application for, 1736.

appeal from order appointing, 1716 n., 1718.

appearance, appointed before, when, 1734.

application for, 1735, 1786; by whom made, 1716 n., 1784; how made, 1716 n., 1785.

 service of notice of, 1735.

 special leave, when necessary, 1735.

applications relating to, by whom to be made, 1716 notes, 1752; how made,
 1752.

application relating to property under, how made, 1752.

appointment, mode and effect of, 1738-1745.

 discretionary in court, 1715 and n., 1717 n.; when ordered, 1715-1729.

 who appointed, 1732, 1783 and n.

 person who should check receiver, not appointed, 1732.

[The references are to the star paging.]

RECEIVER — *continued.*

- proceedings by person prejudiced by, 1744.
- time when the order takes effect, 1744 n.
- after a decree for sale, 2127 n.
- sanction of court required to proceedings relating to estate, after, 309, 310.
- appointment, mode of, 1783-1788.
- when appointed by order, subject to giving security, 1740.
- when order directs a proper person to be appointed, 1788-1740.
- evidence, 1788.
- final order of appointment, 1740.
- assistance, writ of, issue of, to enforce delivery of possession to, 1742.
- attornment, direction for in order appointing, 1787.
- how enforced, 1741-1743.

(See ATTORNMENT.)

- balance of, payment into court of, 1758, 1754; how enforced, 1754.
- must be made, though no order for payment, 1754.
- neglect in making, penalty for, 1755, 1756.
- barrister may be, 1783.
- behalf of all parties, appointed on, 1740, 1741.
- benefit of, who entitled to, 1718.
- bid at sale under decree, not allowed to, 1271 n.
- bill for, permitted though no personal representative, 201 n., 1723 n.
- Canada, when appointed of property in, 1731.
- canal tolls, when appointed of, 1727, 1781.
- canonry, when appointed of, 1780.
- certificates, 1743 n. (a).
- China, when appointed of property in, 1731.
- clerk of the peace, of profits of office of, 1730.
- co-defendant, against, when appointed, 1784.
- committal of, for not bringing in account, or paying in balance, 1754, 1755.
- compensation, 1745-1748.
- consequences of appointment of, 1741.
- corporations, 1733 n., 1734 n. (b), 1741 n.
- counsel, cannot act as, in the business, 1747 n.
- costs of, 1293, 1740, 1747, 1753, 1756 n., 1765.

(See COSTS.)

- creditor of, for goods supplied for the estate, payment of, 1764.
- creditor's suit, appointed in, where sale clearly necessary, 1720.
- Crown accountant objectionable as receiver, 1733.
- custody of property, right to, vests in on giving bond, 1741 n.
- danger to the estate, when appointed on ground of, 1721-1724.
- death of, passing account after, 1757.
- debt, sanction of judge necessary to proceedings by, to recover, 1750.
- decree, after, may be appointed though no prayer, 1734.
- decree, superseded by, unless expressly continued, 1765.
- deduction of costs of unsuccessful application against, from balance of, when permitted, 1747.
- defendant, not appointed on application of, 1716 n.
- defective as to parties, may be appointed though suit is, 1784.
- definition of, 1715.
- delivery of securities for personal property, direction for, in order, 1787.
- delivery of possession by party to, how enforced, 1742.
- Demerara, when appointed, of property in, 1731.
- demurrer for want of parties, after allowance, 598.
- discharge of, 1764, 1765.
- application, on his own, grounds for, 1764.
- application for, how made, and service of notice thereof, 1765.
- bankruptcy, on, 1765.
- cesser of plaintiff's right, on, 1769.
- costs of, 1765.
- ex parte* application of party at whose instance appointed, not ordered on, 1764.
- neglect for, 1756.
- new trustees, on appointment of, 1764.
- order, form of, 1765.
- pendente lite*, when appointed, 810, 811, 1728.
- unnecessary, when he has become, 1764.
- dismissal of bill, account must be passed, notwithstanding, 1754.
- distress by, in whose name made, 1748.
- leave to make necessary, and how obtained, 1748.

[The references are to the star paging.]

RECEIVER — *continued.*

- disturbance of possession of, a contempt, 1743, 1744.
sheriff, proceedings, when property taken by, 1744.
Divorce Court, pending litigation in, 1626 n.
dock tolls, when appointed of, 1731.
duties of, 1750.
effect of appointment of, 1740.
 changes no right, 1718 n., 1741 n.
ejectment against, inquiry whether it should be defended, 1744.
elegit, when appointed against creditor in possession under, 1718 n.
elegit, writ of, not issued against, for balance, 1068 n.
England, when appointed of property out of, 1731.
equitable claims, usually appointed on behalf of person having, 1716; without prejudice to prior legal estates, 1717.
eviction of tenants by, leave necessary for, 1749.
evidence in support of application for, 1785.
ex parte, not appointed, unless party has absconded, 1716 n. (a), 1733 n. (a), 1785
 and n.
executors, when appointed against, 1722 and n., 1723.
 ineanity of husband of executrix, on, 1723.
 insolvency of, 1722.
 jurisdiction, out of the, 1722.
 misconduct or neglect of, 1722.
 poverty, not appointed on mere ground of, 1722.
 except in case of husband of executrix, 1722.
expenditure by, sanction of judge necessary to, when, 1748 n. (a), 1749 and n.
expenses of, a just allowance, when, 1234, 1235.
failure of banker, when charged with loss occasioned by, 1751.
fellowship, when appointed of, 1730.
fieri facias, writ of, not issued against, for balance, 1068 n., 1755.
foreign court, appointment of, pending litigation in, 1726.
 country, to collect personal estate in, 2127 n.
 and to sell and receive produce of sale of real estate, 2127 n.
 suit by foreign, 1750 n.
fraud, when appointed in cases of, 1721.
further consideration, appointment of, at hearing on, 1370.
grounds for appointment, 1716 n., 1717 n., 1722 n., 1729 n.
half-pay, not appointed of, 1730.
hearing, appointment of, at or after, without prayer, 1734.
heirlooms, may be appointed of, 1731.
implied trusts, appointment in the case of, 1721, 1724.
inadequacy of price, when appointed in case of, 1721.
incumbrancers, equitable, at instance of, 1716, 1717.
India, when appointed of property in, 1731.
infant, appointment in case of, 1354, 1729.
infant's estate, of, when charged with interest although account settled, 1758.
injunction to restrain proceedings against, 1058.
interest on incumbrances, how kept down by, 1755.
interest on balance, how and when charged with, 1755 and n., 1756.
Ireland, when appointed of property in, 1731.
issue, trial of, when directed, on application for, 1078.
Italy, when appointed of property in, 1731.
joint, how far liable for each other's acts, 1751 n.
joint-tenants, when appointed in case of, 1726.
judgment creditor, when ordered to refund payment made, by, 1744.
 when entitled to receiver, 1087 n.
jurisdiction, against person out of, 151, 1718.
jurisdiction, when appointed of property out of the, 1781, 1748 n. (a).
landlord, rights of, how affected by appointment of, 1745.
leases by, sanction of court required to, 1749; how obtained, 1749.
legal estate, when granted against, 1719, 1725.
legal right, not appointed on application of person having, 1724.
legal title, not appointed where, in dispute, 1725.
 except under special circumstances, 1725.
liabilities of, 1751, 1752.
limitations, statute of, running not prevented by appointment of, 1718 n.
loss occasioned by default of, how borne, 1741.
losses, when charged with, 1748 n. (a), 1751.
manager, 1781 n.

[The references are to the star paging.]

RECEIVER — *continued.*

- market tolls, when appointed of, 1781.
- Master, effect of his judgment in selecting, 1738 n.
- master forester of royal forest, of profits of office of, 1730.
- mine, when appointed in case of, 1727.
- misjoinder, granted pending litigation, notwithstanding, 304.
- mode of appointment, 1738–1740.
 - when appointed by order, subject to giving security, 1740.
 - when order directs a proper person to be appointed, 1738–1740.
 - evidence, 1738 ; final order of appointment, 1740.
- mortgagee, at instance of first, in case of a trade, 1727.
- mortgagee in possession, not usually appointed against, 1717–1720, 1719 n.
- mortgagee, at instance of second, 1716.
 - absconding mortgagor, against, 1718.
- mortgagor out of the jurisdiction, when appointed against, 152
- motion, application for, usually made by, 1735.
- New South Wales, when appointed of property in, 1731.
- newspaper, of a, 1727 n.
- next friend, or his son, not appointed, 1732.
- notice of motion for, 1785 and n. ; amendment of bill, a waiver of 425, 1602.
- occupation rent, party when charged with, 1742 and n.
 - tenant, when charged with, 1748.
- office, of profits of, 1730.
- officer of the court, virtually, 1715, 1757 n.
 - at all times entitled to advice and aid of court, 1715 n.
 - acts under supervision of court, 1715 n., 1748 n.
 - his possession is possession of court, not to be disturbed by process from another court, 1741 n., 1743 n.
- order for, form of, 1737.
- outstanding estate, how got in by, 1750.
- Parliament, member of, objectionable as, 1788.
- parochial rates *in futuro*, not appointed of, 1781.
- partner, retired or solvent, when appointed, 1782.
- partnership, when appointed, in cases of, 1727–1729, 1727 notes.
 - continuance of, sought, not granted, if, 1727.
 - death of co-partner, in case of, 1729 ; of all partners, 1729.
 - disputed, not granted where, 1727.
- party to suit, when appointed, 1732.
 - special leave necessary, and how obtained, 1732.
- payment into court by, may be made at any time, 1754.
- payment into court, instead of to receiver, permitted, 1746.
- peer, objectionable as, 1788.
- pendente lite*, 1725, 1726, bill for, not dismissed for want of prosecution, 810.
 - not brought to a hearing, 810, 811, 1726 n.
- costs of, 810, 811.
- pension, when appointed of, 1730.
 - not appointed, if granted to support the dignity of a peer, 1730.
 - or for past services, 1730.
- personal representatives, against, 1722, 1728.
- petition, when appointed on, 1716 n.
- plea, pendency of, when no answer to the motion, 1734.
- possession of person having prior legal estate, not usually granted against, 1718.
- possession, in cases of disputed, 1719–1721.
- possession of person entitled, not ousted by appointment of receiver, 1741.
- powers of, 1748–1750, 1748 n.
- prayer necessary, when appointment before decree, 1734 and n. (b).
- pro confesso*, appointment of, when bill taken, 527.
 - no proceeding to be taken by, without leave, 527.
- Probate, Court of, of real estate, can be appointed by, 204 251 and n., 1725 n., 1726 n.
- appeal from, pending, 1726.
- litigation in, when appointed, pending, 1725, 1726.
- proceedings against, leave to take, necessary, 1744 ; how obtained, 1744.
- pro interesse suo*, inquiry, in case of receiver, 1744.
- property over which appointed, 1729–1731.
 - where in possession of third person, proceedings by, 1750 n.
- puisne* incumbrancer, when appointed on behalf of, 1788.
- purchase subject to charges, when appointed in case of, 1724.
- purchaser *pendente lite*, when appointed at instance of, 1720.

[The references are to the star paging.]

RECEIVER — continued.

- railway tolls, when appointed of, 1731.
- railroad, 1731 n.
- recognition of, how given, 1736, 1737, 1739, 1757-1763.
 - put in suit, how, 1757-1763.
 - stay of proceedings, on payment into court of amount due, 1763.
 - vacation of, 1765.
- (See RECOGNIZANCE.)
- rectory, when appointed of profits of, 1730.
- second incumbrancer, at instance of, 1718 n.
- renewable leaseholds, in case of, 1724.
- rents, payment of, to, how enforced, 1748; after receipt by solicitor, 1748.
 - raising by, leave necessary for, 1749.
- repairs what may be made by, without leave, 1750.
- salary or allowance of, 1745-1748, 1747 n.
 - abandoned proceedings, costs of, when allowed, 1747.
 - amount of, 1745, 1746.
 - extraordinary allowances, when sanctioned, 1747.
 - charged on property, 1753 n.
 - journeys, when allowed costs of, 1747.
 - right of receiver to, 1747.
 - stage of cause at which fixed, 1745.
- sale by, 1752 n. (a).
- security to account, from, 1736, 1737.
 - additional, when required, 1737.
 - dispensed with, when, 1737.
- Ireland, when person resident in, appointed, 1786 n.
- new, required, when, 1737.
- recognition given by 1736, 1739.
- (See RECOGNIZANCE.)
- sequestration, effect of appointment of, on, 1059, 1741.
- service of notice of motion for, 1785.
 - special leave for, when necessary, 1785; form of notice, 1735.
- solicitor in cause not appointed, 1783.
- specific performance, in suit for, 1720.
- spoliation, when appointed in cases of, 1720, 1721.
- stay of proceedings, account must be passed after, 1754.
- suit, only appointed in, 1783; except in case of infants, 1854, 1738.
- suit by, sanction of court necessary to institution of, 810, 1743 n. (a).
 - in his own name, 1741 n.
 - against him, without permission of court, a contempt, 1748 n. (a), 1757 n.
- summons, application for, when made by, 1785.
- summons suit, appointment of, after order in, 1734.
- surety, liabilities and rights of, 1766-1768.
 - action against, stayed on terms, 1763, 1767.
 - discharge of, 1765, 1766; own request, not allowed on, 1766.
 - bankruptcy, on his, 1766.
 - new recognition must be given on, 1766.
 - dispensed with, when, 1787.
 - liability of, extent of, 1766; relaxed, when, 1767.
 - passing of account, allowed to attend, when, 1767.
 - payments by, when entitled to stand in receiver's place for, 1767.
- tenancies, creation or determination of by, 1749.
- tenants in common, in case of, 1726, 1728 n.
- tenant for life, bound to renew, when appointed against, 1724.
- trade, of a, when appointed, 1725.
- trial of questions of fact, direction for, on application for receiver, 1078.
- trustee, when allowed to employ a receiver, 1785.
- trustee, when appointed a receiver, 1732.
- trusts, when appointed in case of, 1723.
 - absence of trustees, when made in, 1724.
 - acceptance of new and conflicting trusts, 1728.
 - acquiescence of *cestui que trust*, effect of, 1724.
 - disagreement of trustees, in case of, 1723.
 - implied trusts, in case of, 1721, 1724.
 - refusal to act of trustees, in consequence of, 1728.
- turnpike tolls, when appointed of, 1781.
- unsuccessful application against, costs of, when borne by estate, 1747.
- vacancy in office of, application to fill up, how made, 1735.

[The references are to the star paging.]

RECEIVER — *continued.*

- vacation, appointment in, 985 n.
- waiver of rights by, not allowed, 175 n.
- West Indies, when appointed of property in, 1781.
- wrongful possession, when appointed in cases of, 1720.

RECITAL,

- decrees and orders, in, 1002–1004.
- deed, in, infant, when not bound by, 170.

RECOGNITION OF FOREIGN STATES,

- necessary before foreign State can sue, 18.
- judicially noticed, 18, 19, 546.

RECOGNIZANCE,

- costs, for, on appeals to the House of Lords, 1494.
- cross-appeal, not required in, 1496.

(See APPEALS TO THE HOUSE OF LORDS.)

- deposits, for, on sale by court, security for, how given by, 1272
- receiver's, 1736–1738, 1757–1763, 1765.

allowance of, 1739.

amount of, 1736; how fixed, 1739.

enrolment of, 1739; order for, when necessary, 1739.

fee on, 1739 n.

form of, 1736.

new, on discharge of surety, 1766.

penalty, execution issued for, 1763.

settlement of draft of, 1739.

stamp on, 1739 n.

suit, how put in, 1757–1763.

order for, necessary, 1757.

stay of proceedings on, on payment into court of amount due, 1763, 1767.

sureties, who not received as, 1739 n.

affidavit of, 1739.

dispensed with, when, 1737.

unequal sums, may be bound in, 1736.

taken, before whom, and how, 1736, 1739.

vacated, how, 1765; papers left on bespeaking order for, 1012, 1765.

RECORD,

- admissions on the, 886–847.

(See ADMISSIONS.)

answer, not of, till filed, 754, 755 n.

answers to original and amended bills, form only one, 729.

bill, not of, till filed, 898, 899 and n.

bill in chancery, not, so as to be admissible in other courts, 687.

though it is in the court itself, 687.

Chancery, of Court of, production of, how obtained, 871, 872, 1838.

courts of justice, records of, how proved, 863.

decree or order, not of, until signed and enrolled, 687, 1018.

evidence on former trial, 940 n.

evidence to explain, 659 n., 1003 n.

exhibits, what records may be proved as, at hearing, 881, 882.

instrument made part of, by reference thereto, 867.

judgment at law, not a, until made up, 687.

matter of, what is, 687; quasi, of, what is, 687.

matters repugnant to the, not admitted by demurrer, 545.

pleadings, original, of, when referred to, 981.

pleas of, matter of, 658–665, 687.

in a Court of Equity, 658–661; in other courts, 662–665.

oath, put in without, 687.

(See PLEA.)

reference to, on answer, 754.

decree or order, on, 1008, 1009, 1010 and n.

left on bespeaking decree or order, 1009, 1010.

notice of motion, on, 1594.

petition on, 1604.

superior courts, exemplifications of, admitted without proof, 863.

RECORD AND WRIT CLERK,

answer taken by, when, 744; fees on taking, 744 n.

of invalid, taken by, when, 745; fee on taking, 745 notes.

attendance of, at hearing of cause *pro confesso*, no longer necessary, 526.

[The references are to the star paging.]

RECORD AND WRIT CLERK.—continued.

with records, at offices of the court, 871, 872, 1838; fees on, 872 and n.
out of the court, 872, 1838; fees on, 872 n.

certificate. (See **CERTIFICATE, RECORD AND WRIT CLERKS'.**)

meaning of, in decree or order, 1008.

signature of, to office copy of decree or order, 871 n., 1018; of pleadings, 757.
866, 871.

docket of enrolment to, 1023.

injunction to writ of, 1674.

RECORD AND WRIT CLERKS' OFFICE,

affidavit filed in, 898.

answer filed at, 754; commission to take, issue of, from, 749.

amendment of bill, how recorded at, 423.

appearance, entry of, at, 453, 532, 537; after decree, 158; by plaintiff for defendant, 462.

assistance (writ of), issue of, from, 1063.

attachment, issue of, from, 422, 423, 1046.

filed in, when returned, 1047 n.

(See **ATTACHMENT, WRIT OF.**)

bill filed in, 398; amended, when reprint necessary, 423.

caveat against enrolment of decree or order, when entered in, 1023.

change of place of business, residence, or address, for service of solicitor or party acting in person, notice of, to be given at, 455 n.

change of solicitor, entry of order for, at, 454, 1848.

notice of, when given at, 1849.

change of custody of great seal, notice of, put up in, 357.

copies made in, fees for, 1838.

demurrer, filed in, 591.

demurrer by witness filed in, 944.

deposit of documents at, 1836, 1837.

(See **DEPOSIT IN COURT.**)

depositions filed in, 902, 910, 938.

(See **DEPOSITIONS.**)

distingas against corporation, issue of, from, 477, 1067; filed in, 477.

to restrain transfer, issue of, from, 1692.

(See **DISTRINGAS, WRIT OF.**)

elegit, writ of, issue of, out of, 1068.

filed in, when returned, 1064.

(See **ELEGIT, WRIT OF.**)

evidence, commission to take, issued from, 915.

examinations, after third insufficient answer, filed in, 772.

examination of married woman filed in, 94.

examiner's certificate of default or misconduct of witness filed in, 908.

exceptions, filed in, 852, 765.

ex parte examination of witness, filed in, 901.

fieri facias, writ of, issue of, out of, 1063.

filed in, when returned, 1063.

(See **FIERI FACIAS, WRIT OF.**)

fieri facias de bonis ecclesiasticis, issue of, from, 1065.

filed in, when returned, 1066.

(See **FIERI FACIAS DE BONIS ECCLESIASTICIS, WRIT OF.**)

guardian ad litem, entry of order appointing, at, 163, 178.

habeas corpus, writ of, issue of, from, 491, 492, 909, 1049.

filed in, with return, 491 n.

(See **HABEAS CORPUS, WRIT OF.**)

information, filed in, 399; amended, when reprint required, 422.

injunction, writ of, issue of, from, 1674.

(See **INQUIRY, WRIT OF.**)

inspection of documents deposited in, 1835; fee for same, 1838 n.

interrogatories filed in, 482; for examination of plaintiff, filed in, 1554.

jury panel, with names of jurors indorsed, deposited in, 1110.

lower scale of costs, certificate of, filed in, 1444.

memorandum of service of copy of bill on formal defendant, entry of, in, 430, 431.

memorandum of service of notice of the decree, entry of, at, 436

direction for entry, how obtained, if service irregular, 436.

name, place of business, and address, for service of solicitor, and principal solicitor (if any), or of party (if acting in person), to be written or printed on all proceedings left at, 454, 455.

[The references are to the star paging.]

RECORD AND WRIT CLERKS' OFFICE — *continued.*

ne exeat regno, writ of, issue of, from, 1709.

next friend, entry of order appointing new, in, 77, 78, 112.

notice of enlargement of time for filing, affidavits on motion for decree, service of, at, 822.

oath or signature, production of order to put in answer without, at, 755.

partition, commission of, issue of, from, 1152; filed in, when returned, 1159.

pauper, entry of order for admission as, at, 41.

petition of right filed in, 181.

plea filed at, 690.

production of documents filed or deposited in, how obtained in Court of Chancery, 872, 1838; fees on, 872 n.

out of the Court of Chancery, 872, 1838; fees on, 872 n.

not ordered if certified or examined copy will answer the purpose, 872.

receiver's account, deposit of, in, 1758.

record for trial, filed in, 1088; after trial, with jury panel annexed, 1110.

replication filed in, 831.

representation of the estate, entry of order for, at, 204.

sequestration, issue of, from, 478, 1051.

(See SEQUESTRATION.)

sequestrari facias, writ of, issue of, from, 1068.

filed in, when returned, 1068.

(See SEQUESTRARI FACIAS, WRIT OF.)

subpœna issued from, 407, 967, 1451.

(See SUBPŒNA, WRIT OF.)

transfer of cause, entry of order for, at, 398.

traversing note, filing at, 514.

venditioni exponas, writ of, issue of, from, 1065.

RECORD FOR TRIAL (OF QUESTION OF FACT BEFORE THE COURT ITSELF),

copy of, for judge, 1086.

entry of, 1083.

filings, 1083; after trial, with jury panel, and verdict indorsed, 1110.

made up, how, and paper on which written, 1083.

marking, whether with or without jury, 1083.

setting down, and entry for trial, 1083.

transmission to registrar, 1086.

verdict indorsed on, 1110.

RECOVERY (COMMON),

abolished, 662.

plea of, 662; form of, 662.

RECTOR,

issue, right of, to, 1074.

RECTORY,

profits of, receiver, when appointed of, 1718 n., 1720.

REDEMPTION (SUIT),

accounts in, form of, and how taken, 1286, *et seq.*

to charge mortgagee with occupation rent, occupation must be alleged and shown, 2223 n.

amendment of bill, 418 n.

bankrupt, cannot bring, 60.

bill for, must offer to redeem, 385 n., 1918 n.

costs of suit for, 1385, 1386, 1387 and notes; of claimants under mortgagee, 260.

decree for, form of, 998, 999 and notes; final order in, required, and how obtained, 998.

should fix time for, &c., 2222 n.

effect of failure to redeem within the time, 2225 n.

where no time fixed for redeeming goods, 2281 n.

direction for annual rents not added to, 1251 notes.

different estates mortgaged for one sum must be redeemed together, 212.

so when mortgaged for different sums, 218.

discovery whether mortgagee a trustee not required in, 570.

dismissal of bill for, on payment of debt and costs, 795.

limitations, statute of, a bar to, when, 650; plea of statute, 639.

parties to suit for, 212-216, 257 n., 259, 260, 261, 279, 280, 285.

assignment of mortgage, in case of, 260, 261.

derivative mortgage, in case of, 215, 216.

[The references are to the star paging.]

REDEMPTION (SUIT) — continued.

- mortgage money, all persons interested in, 212, 257, 258.
 - unless sufficiently represented, 212, 259.
- mortgagor, in suit by second mortgagee, 213.
- partial interest in equity of redemption, in suit by person having, 279, 280.
- personal representative of mortgagee, necessary party as well as heir, 284.
- prior mortgagee necessary party to, 279.
- redeem, all persons entitled to, 212.
- settlement by mortgagee, in case of, 260.
- several estates mortgaged to one mortgagee, where, 212, 218.
- subsequent incumbrancer not a necessary party, 280.
- trustees, where mortgaged estates vested in, 215.
- production not ordered before decree, in, 1835.
- statement of defendant's title in, 321, 322.
- statement of plaintiff's title in, 314.
- time of payment not enlarged in suit for, 1000.
- venue of, in Massachusetts, 1918 n.
- executor or administrator may sustain, 1925 n.
- accounts in suit for, before Master, 1286–1248.
 - mortgagee in possession, for what liable and for what allowed, 1236, 1237 and n.
 - rents, issues, profits and waste, 1236 n.
 - but not for trespasses, or rent if he is in possession as tenant of the mortgagor, or for waste committed as tenant, 1236 n.
 - form of decree for account in such case, 1237, 1238.
 - how far mortgagee is trustee for mortgagor, 1239 notes, 1240, 1241.
 - steward or bailiff, 1237 n.
 - may be taken, though mortgagee never in possession, 1237 n.
 - where formal possession taken, 1237 n.
 - mortgagee in possession permitting mortgagor to take rents and profits, 1237 n.
 - protecting possession of mortgagor by means of the mortgage, 1237 n.
 - principle on which court acts in charging mortgagee in possession, or acting *mala fide* in reference to subsequent incumbrancers, 1237 n.
 - party applying to redeem should bring in charge stating rents and profits, &c., claim for waste, &c., 1238.
 - proceeding upon this charge, 1238 and n.
 - discharge by defendant, what it should state, 1238.
 - the principles of set-off do not apply in New Jersey and Massachusetts, 1238 n.
 - secus* in New Hampshire, 1238 n.
 - rents and profits, duty of mortgagee to obtain, 1237 n., 1238, 1239.
 - with what rents chargeable, 1239.
 - those he might have received with reasonable care, or without wilful default, 1237 n., 1239 and n.
 - suffering insolvent tenant to occupy, 1239 and n.
 - occupation rent, 1239 and n.
 - arising from mortgagee's improvements, 1240.
 - rate of rent, 1240.
 - depreciation, 1240.
 - waste, 1240.
 - must be charged in bill, 1240 n., 1920 n., 1926 n.
 - debt paid, occupation rent, or rents and profits, after, 1241.
 - where, in such case, mortgagee supposes rights of mortgagor extinguished, 1241 n.
 - overpayments by mortgagor may be recovered back in suit to redeem, 1241 n.
 - how mortgagee regarded when his debt is paid, 1241.
 - duty of Master when no accounts have been kept, 1241.
 - charge for occupation rent, 1241.
 - effect of mortgagee's negligence in keeping, 1241.
 - where mortgagee insures and recovers for loss, 1242.
 - where mortgagee pays claim for which he was surety for mortgagor, and receives contribution from co-surety, 1241 n.
 - allowances, 1242–1247.
 - as to repairs and lasting improvements, 1242.
 - to entitle mortgagee to an inquiry as to, he must make a case for it at hearing, 2218 n.
 - duty of mortgagee in regard to repairs, 1242.
 - how reasonableness of repairs determined, 1242.
 - mortgagee allowed no advantage out of the estate beyond principal and interest, 1242.
 - for what repairs and improvements allowed, 1242.

[The references are to the star paging.]

REDEMPTION SUIT — *continued.*

- where mortgagee occupies and improves, supposing himself absolute owner, 1243.
- for what not allowed, 1242, 1243.
- where repairs and improvements exceed rents and profits, 1243, 1244, 1245.
- all expenses necessary to preserve the estate allowed, 1243.
- aqueduct, 1243.
- fences, 1243 n.
- expenses for improvements made with acquiescence of holder of equity, 1243.
- disbursements deemed reasonable when consented to, 1243.
- interest on sums expended, 1244.
- expenses of working mortgaged mines, 1244 and n.
- how far expenses may be allowed for lasting improvements — question considered, 1244, 1245.
- only so far as beneficial to the estate, 1244 and n., 1245.
- other allowances made or refused to mortgagee, 1237 n., 1245, 1246.
- sums paid in fines for renewals, 1245.
- taxes, 1245, 1246.
- in supporting title to the estate, 1245.
- for discharge of prior incumbrancers, 1245.
- to procure administration to mortgagor, 1245.
- extra costs, when, 1245.
- for dower rights, 1245 n.
- for insurance, 1246 and n.
- interest on sums advanced, 1245.
- compensation to mortgagee for his trouble, 1246, 1247 and notes.
- as to the mode of stating account, 1247.
- amount to be made up to time of Master's report, 1248.
- remedy wholly in equity, 1248.
- effect of Master's report, as to mortgagee's account, 1248 and n.
- rests, annual or semi-annual, in taking accounts, 1251.
- not allowed, unless ordered, 1251.
- case, for, must be made out, 1251 n.
- times for making rests, and rules, 1251 and notes.
- when mortgagee takes possession before any arrears of interest are due, 1251 n.
- interest in arrears when he takes possession, 1251 n.
- cases where rests allowed, and how interest computed with, 1251 n.

REDUCTION INTO POSSESSION,

- chose in action*, of wife's, by husband, what is, 115-123.
- award in husband's favor, 118.
- decree or order for payment to him in her right, 115, 118.
- deposit by husband in court, 115.
- judgment in husband's action for her property, 118.
- payment to credit of cause to which husband and wife are parties, 115, 1778 n.
- receipt by husband or his agent, 117.
- release by husband, 122.
- transfer of, to credit of husband's lunacy, 115.
- what is not, 115-123.
- annuity, assignment or release by husband of her, 123.
- appropriation of fund to meet her legacy, 115.
- assignment by husband after dissolution of marriage, judicial separation or protection order, 122 n., 123 n.
- assignment by husband of her reversion, 119, 123.
- although prior estate previously assigned to her, 119.
- or she concurs therein (except under statute), 122.
- or her father concurs, she being an infant, 122.
- carriage to joint account of wife and husband, 116.
- decree or order for payment to both, 118; not declaring rights, 118.
- for payment to assignee of, between decrees *nisi* and absolutes, for dissolution of marriage, 119 n.
- institution of action or suit, 115.
- intention to change character of the property, 115.
- judgment in action, to which both are parties, 118.
- payment to credit of joint account, 116, 1778 n.
- to husband, of part of sum due on her promissory note, 116.
- to trustees for wife, 116.
- proof in bankruptcy for debt of wife, 118.

(See MARRIED WOMAN.)

[The references are to the star paging.]

RE-EXAMINATION (OF WITNESS),
cross-examination, to follow, 904, 919.
hearing of cause, at, 981.
trial of question of fact, on, 1104.
upon order, in what cases permitted, after, depositions have been suppressed, 952
and n.
to prove some fact omitted, 952, 953.
on application of witness, to correct mistake, 953.
 amendment of deposition, 953.
caution in allowing re-examination, 953.
deposition must be resworn, 953.
by the court, 953; in discretion, 952 n.
at what time, 954.
what affidavit necessary, 954.
in what case without order, 954.
when order necessary, 952, 955.
 form of order, 955.

REFORMING DEED,

bill for, 1961 n.
 when sustainable, 1971 n.
object of decree for, 1971 n.
mistake, how to be made out, 1973 n.
parties to suit for, 280 n.
with specific performance, 365 n.

REFRESHER,

allowed, when, 977 n., 1440 n.

REGATTA,

holding a, nuisance, when, 1635 n.

REGISTERS,

British ships, of, how far admissible without proof, 864.
parish, extracts from, how proved, 865.

REGISTER OFFICE (GENERAL),

copies of entries in, when admissible, 865.

REGISTRAR (CHANCERY),

alterations in decree or order, power to make, 1014.
appointments of, to settle minutes, 1012.
attendance in court of, 980 n.
cause-lists kept and made out by, 971.
certificate of, of no cause shown, 1067, 1160, 1593, 1685.
conditional appearance, entry of, with, 587.
demurrer, entry of, with, no longer required, 594.
direction of, for sale, transfer or delivery out of court of stock or securities, 1792,
 1810, 1812, 1814.
indorsement of, on admissions, 1010; exhibits on, 884 n.
indorsement of, on order for *habeas*, when new writ directed, 492 n.
minutes taken down by, 980.
plea, entry of, with, no longer required, 692.

REGISTRARS' BOOKS,

calendars or indexes to, 1018.
decrees and orders entered in, 1017.
report office, preserved in, 1018.

REGISTRARS' OFFICE,

attachment, entry of *præcipe* for, in, 465, 489, 1046.
distringas, entry of *præcipe* for, in, 477.

REGISTRATION OF TITLES. (See LAND-TRANSFER ACT.)

REGULATION,

Queen, Privy Council, Government Department, or Colonial Government, of, how
proved, 863.

REHEARINGS AND APPEALS. (See APPEALS AND REHEARINGS.)

RELATOR,

answerable for the propriety of the proceedings, 14, 15.
authority from, must be filed with information, 18, 807.
charity cases, not absolutely necessary in, 13.
 need not be interested in charity, 13.
conduct of suit by, 12 n.

[The references are to the star paging.]

RELATOR — continued.

corporation may be, 13.
costs of, 14-16.

(See Costs.)

costs, charges, and expenses, when allowed, 12 n., 14, 15.
death of, not an abatement, except in information and bill, 18.
proceedings upon, 14.
idiots or lunatics, necessary in informations on behalf of, 14.
indemnified by solicitor, information taken off file, 13 n.
interest of, necessary, 11, 13.
lunatic, cannot be, 14.
named, when, 10-12.
own name, cannot proceed in, and not a party to suit, 10.
person, not heard in, 980.
plaintiff, when he ought to be, 10.
production of documents, how obtained from, 1825.
security for costs, when required from, 16 n.
separately from Attorney-General, cannot be heard, 10.
substance, should be a person of, 16.
who may be, 13.

(See ATTORNEY-GENERAL. INFORMATION.)

RELEASE,

discharge of judgment pleaded as, 669.
fraudulent, delivery up of, and setting aside, 381, 667 n.
husband, by, effect of, on wife's *chancery in action*, 122; on her annuity, 123.
plea of, 610, 669, 670.
account, to bill for, 669, 670.
answer in support of, 669; in suit to set it aside, 616, 669.
averments in, 610, 669, 670.
form of, 669, 670.
reply to, 830 n.

(See PLEA.)

seal, not under, pleaded as stated account, 666, 669.

RELEVANCY,

question or statement of, considered in deciding on sufficiency of answer, 769, 1555.

RELIEF,

absent parties, waiver of, against, 293.
alternative, 384 n., 385 n.
bill of, what constitutes, 306, 547.
ancillary, bill of discovery may pray for, 547, 548, 1556, 1557.
bankrupt, where entitled to file, 59.
not convertible by amendment, into bill of discovery, 408.
charities, given in case of, though not prayed, 18, 384.
costs, when prayed as relief, 878.
defects in prayer for specific, when supplied under general, 377-383.
demurrer to, 2, 325, 326, 548.

(See DEMURRER.)

discovery, on a mere bill of, when may be obtained, 548 n.

direct, person against whom none sought, service of copy of the bill on, 423.

(See COPY OF THE BILL. DEFENDANT, FORMAL.)

fraud, for, only granted on case made by bill, 327, 381, 382.
course, when other matters alleged in bill, 382.

infants, given in case of, though not prayed, 73, 384.

general, bill must pray, 326, 377 n., 378.

plea to, 625-678.

(See PLEA.)

prayer for, 377-388, 1885 n.

(See PRAYER OF BILL.)

proper, must be specifically prayed, 325, 326.

specific, prayer of bill for, 365, 378, 382, 384.

must be agreeable to case stated, 325 n., 326 n., 378 n., 381 n.

not specifically prayed is within general relief, 377 n.

mistake in specific relief asked for, 377 n.

under prayer for general, plaintiff may have such relief as he is entitled to, 378 n.

REMAINDER-MEN.

appeals by, 1461.

boundaries, necessary parties to suits to ascertain, 209.

intermediately entitled, coming into being *pendente lite*, necessary parties, 206.

[The references are to the star paging.]

REMAINDER-MEN — *continued.*

 added by supplemental order, 258.
 partition suit by tenant for life, when not necessary parties to, 209.
 persons entitled in, up to first vested estate of inheritance, necessary parties, 227,
 228, 265.
 waste, when restrained on application of, 1629.

REMAND,

 jail, to, of defendant in custody for want of answer, 493.
 pro confesso, in order to take bill, 492, 493.
 Whitecross-street Prison to, if defendant in custody for want of answer, 491; *pro
confesso*, in order to take bill, 492.
 person in custody for non-payment of costs of, 1454.
 persons disobeying decree or order, of, 1049.

REMEMBRANCE,

 answer as to, when sufficient, 722.

REMOTENESS,

 of plaintiff's interest, immaterial if existing and indefeasible, 317.

RENEWAL,

 covenant for, forfeiture of, when relieved against, 1658.
 specific execution of, 1658 n.

RENT-CHARGE,

terre-tenants, necessary parties to suit affecting, 276.
 except in cases of charities, 276.

RENTS,

 account of, in suit to assign dower, 1168.
 claim for, when bound by statute of limitations, 649, 653.
 express trust of, when, 649.
 forfeiture for non-payment of, where relieved against, 1658.
 payment of, to receiver, how enforced, 1748.
 raising by receiver, leave necessary for, 1749.
 receipt of, by mortgagee after certificate, but before final order for foreclosure
 effect of, 999 n., 1000, 1224 n.
 underlease of wife's term, who entitled to, 127.

RENTS AND PROFITS,

 account of, not directed under prayer for specific performance, 380.
 purchaser under decree, when entitled to, 1277.

REPAIR,

 covenant to, does not preclude injunction, 1658.
 forfeiture, on breach of covenant to, not relieved against, 1659.

REPAIRS,

 receiver, by previous, leave of the judge, when not necessary, 1749, 1750.

REPLICATION, 828-835.

 advertisement of, notice of filing when allowed, 820, 832.

 amendment of, 830, 831.

 amendment of bill, after, 415-417.

 (See AMENDMENT OF BILL.)

 answer, when filed to, 829.

 answer may be read as admission after filing of, 829.

 bill and answer, permitted after hearing on, when, 982.

 omission of, effect of, 984.

 defendants added after, hearing motion for decree as to, 819.

 disclaimer, not filed to, 708, 829; unless coupled with plea or answer, 709.

 costs, where replication filed to disclaimer, 709.

 dismissal for non-prosecution, bill when liable to, on neglect to file, 801, 802, 803,
 833, notice of motion for, intercepted by filing, 804, 805, 833; costs in
 such case, 805, 833.

 motion should not be brought on, if sufficient tender made, 805.

 order for, overrides replication filed same day, 805.

 exceptions for insufficiency, cannot be taken after filing of, 766, 834.

 filing of, 831-833, 834, 983; on acceptance of the answer, 509, 766; at hearing
 nunc pro tunc, 983.

 (See FILING.)

 form of, 830, 2123 and n.

 formal defendants, in case of, 832.

 issue joined by filing, 829; though no answer required, 518 n.

 motion for decree, not necessary where cause heard on, 819 n.

[The references are to the star paging]

REPLICATION — continued.

name, address, and place, for service (if any), of solicitor or plaintiff (acting in person), to be placed on, 831.

nature of, 829.

neglect to file in proper time, consequences of, 833.

new matter, 2120 n.

notice of filing, 831.

(See NOTICE.)

nunc pro tunc, when may be filed, 829 n., 834.

omission to file, remedy for, 834, 983; effect of, 834 n.

one only filed, generally, 829; exceptions, 829.

paper on which written, 831.

preparation of, 831.

plea, to, 95, 830 n., 831.

(See PLEA.)

pro confesso, where bill is so taken as to same defendants, 832.

service of notice of filing, 831, 832.

(See NOTICE. SERVICE.)

time for filing, 832, 833.

amendment of bill not requiring answer, 833.

answer, after sufficient, 833.

enlargement of, 833.

plea, after undertaking to reply to, 833.

traversing note, after, 833.

vacations not reckoned in, when voluntary answer put in, 833.

voluntary answer to amendment, after, 833.

supplemental statement, to, 834.

withdrawal of, when necessary for amendment of bill, 416, 834; not when amendment is only to add parties, 415.

bill and answer, to set down cause on, 834.

evidence entered into, after, 834.

exceptions for insufficiency, in order to take, 766.

REPORT (OF MASTER), 1294.

what it is, 1294.

separate reports, 1294.

certificate of assets, 1294.

general report, 1295.

matter of report, 1295.

form of, and practice as to preparing, 1295, 1296.

must not go beyond matters referred, 1296 and n.

Master must conform to directions in decree, 1296 n.

consent of parties will not confer authority on Master beyond decree, 1296 n.

mode of making up Master's report, 1295-1298.

Master must draw conclusions as to facts, 1297 n., 1298, 1299 n.

even where evidence only presumptive, 1298.

and decision of Master will not be interfered with, except, &c., 1298 n., 1299 n.

must obey instructions of court, 1298 n.

weight and effect of report, 1298 n. 1321 n.

Master not bound to state inferences of law, 1299.

statement of special circumstances, 1299, 2196 n.

evidence, not to be introduced into report unless by direction of court, 1299 notes, 1300 n.

expense of, how allowed, 1317 n. (a).

re-committing, 1320 n. (a), 1821 n. (a).

reference to evidence, 1300 in notes, 1317 n.

schedules, 1300.

how evidence to be reported when Master directed to report it, 13 n.

party should require Master to report such evidence as necessary to show grounds of exception, 1300 n.

rule as to reporting testimony in several States, 1300 n.

accounts from which report is made should accompany it, 1301 n.

should show items of account in full, 1300 n., 1301 n.

and points made by counsel and facts on those points, 1301 n.

draft report, 1301.

settlement of draft report, 1301.

transcript of draft report, 1301.

objections to draft report, 1302.

no exceptions unless there have been objections, and exceptions confined to the points of objection, 1302 and n.

[The references are to the star paging.]

REPORT (OF MASTER) — *continued.*

form of objections, 1802, 1803.

time of bringing them in, 1803.

objections, by persons not parties, 1803.

filings and confirmation of report, 1803.

rule as to return of report in United States courts, 1804 n.

compensation to Master, and mode of obtaining, 1804, n.

confirmation of, what reports require confirmation, 1804, 1805.

what reports do not require confirmation, 1804, 1805 and n.

general rule as to, 1804.

manner in which report is confirmed, 1805 and n.

order to confirm does not prevent party obtaining it from excepting, 1806.

order *nisi*, how served, 1806.

usual causes shown for not making order *nisi*, for confirming report, absolute, 1805 n., 1806, 1807.

practice as to showing cause, 1805 n., 1807.

distinction between reports as to confirmation, 1807.

petition to confirm, 1808; by consent, 1808.

exceptions to report, when proper, 1309 and notes, 1320 n. (a).

to receiver's account, 1309 n.

to reports which do not require confirmation, 1309.

report of the taxation of costs, 1310.

to reports made upon interlocutory applications and requiring confirmation, 1310.

to reports made under decrees, 1310.

costs, 1408 n. (a.)

do not lie to findings as to matters of law, 1810.

not because Master has neglected to draw particular consequences from the facts, 1310.

permitted though there have been no objections to draft, when, 1311 and n.

by whom exceptions may be taken, 1311.

notice of application for leave to file on behalf of creditors necessary, 1811 n.

special order where parties have omitted to carry in objections, 1312.

persons who have obtained leave to attend proceedings, 1312.

when exceptions to be taken, 1312 and n., 1313, 1314.

in United States courts, 1312 n.

when court allow exceptions after report confirmed, 1313, 1314.

or correct manifest error, 1314 n.

second exceptions allowed after first disposed of, 1814.

under very special circumstances, 1814.

form of exceptions, 1309 n., 1315, 1316 n.

to report, as to title, 1315.

must be in conformity with objections, 1315 n., 1316.

founded on facts stated in report, &c., 1317 n.

prepared and signed by counsel, 1316.

exceptions are in nature of special demurrers, and party excepting must point out error, 1309 n., 1816 n., 1317 n.

before what judge to be heard, 1816.

argument on exceptions, 1317.

party must confine himself to the exceptions taken, 1317 n.

what evidence may be used upon, 1322 n.

where evidence reported, court may find facts and make a decree, 1817 n.

how far court will revise conclusions of Master on exceptions, 1317 n.

reference back to Master to review his report on additional evidence, 1317, 1318 n.

where party excepting has omitted to lay important evidence before Master, 1318, 1820 n.

no part of answer read upon argument of exceptions not read before Master, 1318.

rejection of evidence by Master specific subject of exceptions, 1318.

no order on exceptions inconsistent with decree, 1318.

effect of overruling exceptions, 1318.

allowing exceptions, 1318.

deposit and costs, 1319.

costs of exceptions as overruled or allowed in United States courts, 1319

notes.

sending back report to have Master supply some defect in it, 1319.

or to allow the trial of an issue, 1319.

correction of error without referring back, 1318 n.

[The references are to the star paging.]

REPORT (OF MASTER) — *continued.*

- questions not referred, 1296 n. (a)
- review of report, 1819.
- in what cases, 1819–1821.
- where report has been excepted to, 1820.
- where report not excepted to, 1820.
- where report is founded on order, on petition, 1820
- on application by motion, 1820.
- after exceptions disposed of, 1820.
- after confirmation, 1820.
- court cautious of admitting applications to review, 1821 n.
- amendment of report, in what cases allowed, 1821.
- when errors apparent on face of it, 1314 n., 1817 n., 1318 n., 1821.
- after enrolment, 1821.

REPORT OFFICE,

- Accountant-General's certificates of operations filed in, 1785.
- admissions filed in, 849, 1010.
- award in suit referred to arbitration, filed in, 1861.
- certificate of taxation filed in, 1447.
- office copies of decrees and orders made in, 1018.
- opinion of foreign court filed in, 1144, 1145.
- petitions filed in, 1609, 1610.
- registrar's books preserved in, 1018.
- scheme, filed in, 1857.
- sergeant-at-arms, return of, filed in, 494 n.
- submission to arbitration, filed in, 1858.

REPRESENTATIVE OF THE ESTATE,

- appointment of, under statute, 201, 202; when not appointed, 201, 203.
- how made, and who appointed, 204.
- class, appointment of, when some of present, 202.
- dispensed with, when, 201, 202, 1527.
- estate sufficiently represented by, when and when not, 201–203.
- payment out not ordered to statutory, 1809.
- petition, when appointed in proceedings on, 203, 204.
- special case, appointment in proceedings by, 203.

REPRESENTATIVE (PERSONAL)

(See PERSONAL REPRESENTATIVES)

REPUDIATION (OF SUIT),

- by infant, effect of, 78, 79; when co-plaintiff, 79.

REPUGNANCY,

- demurrer, repugnant matters not admitted by, 545
- in pleading, what is, 545, 546.
- between original and amended bill, 408 n., 424 n.
- supplemental bill, 1515 n., 1536.

REQUISITIONS,

- title on, on investments by the court, 1340, 1341.

RESALE,

- application for, how made, 1291 n., proceedings on, 1291 n., 1292.
- at a profit, 1285.
- costs on, 1292.
- on what ground ordered, 1290 n.
- opening biddings, on, how conducted, and subsequent proceedings, 1285–1292;
- practice of opening biddings on advance on, discontinued in England, 1285 n.
- terms on which ordered, 1285 n., 1289 n.

RESERVED BIDDING,

- sale by court, how fixed on, 1268, 1271.

RESIDENCE,

- abroad, meaning, on application for security for costs, 29.
- (See Costs, SECURITY FOR.)

change of plaintiff's when to be stated in bill, 402 n.

permanent, applicant or plaintiff without, must give security for costs, 27.

(See Costs, SECURITY FOR.)

place of, of party acting in person, to be indorsed on proceedings left at Record and Writ Clerks' office, 455; and notice to be given there of any change therein, 455 n.

plaintiff's, or his solicitor's, note of, at end of bill, 389

service of proceedings, not requiring personal service at, 454, 455.

[The references are to the star paging.]

- RESIDUARY DEVISEE,**
administration decree at instance of, without serving others, 218, 438.
- RESIDUARY LEGATEE,**
administration decree at instance of, without serving others, 218, 438.
administration suit by, preferred to executor's, 798.
costs of suit by, 1425, 1426, 1443; one set of, when allowed between him and his
incumbrancers, 1431, 1432.
creditor or legatee's suit, not necessary party to, 296.
creditor's actions restrained after decree, at instance of, 1615, 1616.
death of, on a co-plaintiff, revivor not necessary, 1526, 1527.
necessary party, when, 225; where class large, 225.
when not a necessary party, 224, 254.
parties in suits by, 216.
when interests contingent, 217.
when testator in partnership, 324.
- RESIDUE,**
costs of administration suit paid out of, 1428-1432.
description of, in decree or order, 1005, 1784.
- RESIGNATION,**
plea of statute of Westminster 2d, to bill to enforce, 658.
- RESISTING PLAINTIFF'S DEMANDS (PERSONS INTERESTED IN),**
necessary parties, when, 246-286.
(See PARTIES TO SUITS.)
- RESPONSIVE ANSWER,**
what is, and effect of, 844, 845 in note.
- RESTITUTION,**
security for, when required on bill taken, *pro confesso*, 527.
- RESTORATION,**
cause of, after revivor, 977.
cause of, heard in absence of defendant, when permitted, 978, 979.
pro confesso, when to be heard, 521, 522.
demurrer struck out of paper, of, how effected, 596.
dismissal of bill, after, 597.
dismissal for non-prosecution, after, 809.
dismissal, for non-appearance of plaintiff at hearing after, 979, 980.
petitions, of, to cause paper, 1609.
- RESTRAINING ORDER,**
statutory, under 5 Vic. c. 5, 1688-1690.
application for, how made, 1689; evidence in support, 1690.
discharge or variation of, application for, how made, 1690.
distringas, after issue of, 1693.
effect of, and how enforced, 1690.
service of, 1690.
(See INJUNCTION AND RESTRAINING ORDER.)
- RESTRAINT ON ANTICIPATION,**
effect of, 100 n.
- RESTS,**
annual, not directed in ordinary decree against mortgagee in possession, 1251 and n.
interest, how computed with, 1259 and n.
- RESULTING TRUSTS,**
mortgage of, when wife joins, 125.
persons entitled to, necessary parties, when, 261.
satisfied trust, term created out of wife's inheritance, 125.
- RETAINER,**
devisee, subject to debts of, has not priority over costs, unless notice of insuffi-
ciency given plaintiff, 1425.
personal representative, by, not prejudiced by payment into court, 1778.
subject to married woman's equity to a settlement, 90 n.
costs of suit, will prevail against, 1425, 1778.
solicitor of, what sufficient, 306, 307, 583.
- RETRANSFER (OF CAUSE),**
how effected, 398 n.
- RETURN,**
answer, of commission to take, 752.
attachment to enforce, 758.

(The references are to the star paging.)

RETURN — *continued.*

irregularities in, how remedied, 758.
 attachment, of, 463.
 answer, for want of, 490.
 appearance, for want of, 471.
 arrest after return day, invalid, 487.
 compelled, how, 471.
 costs, for non-payment of, 1454.
 county palatine, when issued into, form of, 470, 471.
 days for, 484.
 decree or order, for non-obedience to, 1045, 1046.
 forms of, 471.
distringas to compel appearance, day of, 477.
 to restrain transfer, day of, 1692.
habeas corpus to bring defendant in custody to the bar, day of, 491, 492.
 inquiry of, writ of, 1140, 1141; filing, 1141.
 messenger, of, 490.
ne exeat, of writ of, 1711; form of, 1711.
 partition, of commission of, 1154, 1159, 1160.
 sequestration, of, 478, 1051.
 sergeant-at-arms, of, 494, 1049.
 sheriff, of, to process, 463, 469, 471–490; compelling, mode of, 470.
 name, made in his, 469.
 time for making, 469.
 true, must be, 469.
 sheriff's-officer, by, of warrant, 467.
subpœna to hear judgment, of, 968; extension of, 968.
 summons for time to answer, of, 742.

REVENUE,

costs of suit relating to, 11, 12, 140 n.

REVERSAL OF ATTAINER OR CONVICTION,
effect of, 57.

difference between, and conditional pardon, 57.

REVERSION,

married woman, assignment of, under statute, 119.
 married woman, of, in chattel real, not bound by husband's assignment, 127.
 in *chase in action*, not bound by husband's assignment, 119–123.
 effect of dissolution of marriage, judicial separation, and protection order upon, 122 n.
 power of courts to compromise, in suit for, 119 n.
 not paid out of court on obtaining assignment of previous interest, 99.
 persons entitled to, up to first vested estate of inheritance, necessary parties, 227, 228.
 persons entitled to, when necessary parties to partition suit, 209.
 purchaser of, from what time liable to pay interest, 1277.
 sale of, costs of suit to set aside, 1386.
 title to, averment of, in plea of purchase for value without notice, 677.

REVERSIONER,intermediately entitled, coming into being *pendente lite*, added by supplemental 229.

waste, when restrained on application of, 1629 and n.

REVIEW (BILLS OF, AND IN THE NATURE OF), 1575–1584.

abatement, matter in, not a ground for, 113.
 affirmation of decree by House of Lords, when permitted after, 1579.
 appeal, relation to, 1576 n. (a).
 appearance to such bill, enforced in same way as to original, 1575 n.
 cases in which filed, 1581.
 consent decree not impeachable by, 978, 1575; except for clerical error, 974.
 costs, review of, 1576 n. (a).
 decree signed or enrolled, impeached by bill of review, 173 n., 659, 660, 1019, 1575.
 not signed or enrolled, by bill in the nature of a bill of review, 173 n., 1576, 1581.
 defence to, 1583.
 demurrer to, 1578, 1583.

(See DEMURRER.)

deposit on filing, 1582.

enrolment, essential to bill of review, 1575 n.

all decrees, matters of, record, and deemed to be enrolled, in most of State courts,
and in the United States courts, 1575 n.

[The references are to the star paging.]

REVIEW (BILLS OF AND IN THE NATURE OF) — continued.

error in the decree, for, 1576 and n.

not for matter of form, or where propriety of decree questioned, 1576.

clerical and obvious errors may be corrected without bill, 1575 n., 1579 n.

execution of decree, not stayed by the filing of, 1582.

extent to which decree must be performed before the filing of, 1582.

file, when taken off, for irregularity, 1578, 1579.

final decree, only lies to, 1019 n., 1576 n., 1579.

form of bill of review, 1580.

of bill in the nature of a bill of review, 1581.

grounds for, 1576 and n., 1577.

infants, 1580 n. (a).

interlocutory decree, 1576 n. (a).

Judicature acts, effect, 2065 n.

law, error in, 1576 and n.

how the error must appear, 1576 n.

the bill, answer, and other pleadings and documents to be examined, 1576 n.

leave to file, for error apparent on face of decree, not necessary, 1577 n.

leave to file, when necessary, 1536 n., 1577.

application for, how made, and service, 1578; evidence in support, 1537 n., 1578.

new matter, for, 1577, 1580 n.; what new matter sufficient, 1576 and n., 1577 and n., 1578.

not matter of right, but of discretion, 1577 n., 1578 n.

notice of the decree, when filed by person served with, 438, 1581.

object of, 1575.

parties to, 1580.

party privy to former suit, can only be filed by, 1579.

generally all persons should be parties who were parties to original bill, 1579 n. as to persons interested in cause, but not affected by the particular errors assigned, 1579 n.

petition of rehearing, bill in nature of bill of review when accompanied by, 1473, 1581.

petition for, what it should state, 1578 and n.

evidence in support, 1578 and n.

finding of facts under the petition not conclusive at hearing on bill, 1578 n. plea to, 1583.

prayer of bill of review, 1580; of bill in nature of bill of review, 1581.

rehearing, right to not affected by, 1120 n. (b).

revivor, does not lie for want of, 113.

second, when allowed, 1579.

not after allowance of demurrer to former bill on same ground, 1580, 1583.

separate account, does not lie after mistake in carriage to, 1579, 1704, 1795.

terms on which allowed, 1578 n.

time for bringing, 1580 and n.

Trustee Relief Act, order under, impeachable by, 1575.

REVIEW (SUPPLEMENTAL BILL IN THE NATURE OF BILL OF),

annuity, filed to impeach, after decree, 1281, 1282.

filed, when, 1575 n., 1581.

leave of the court required for, 1370, 1528 n., 1530 notes, 1587.

wilful default, filed to charge party with, after common decree, 1370, 1581; evidence on application for leave to file, 1870 n., 1581.

REVIVOR,

against whom suit revived, 1508 n., 1509 n., 1540.

where abatement was caused by death or marriage of sole plaintiff, 1540, 1541.

of one of several plaintiffs, 1540, 1541.

where defendant dies, 1541.

after decree, 1541.

on death of husband, 1541.

on death of wife, joint defendant with her husband, 1541.

purchaser on sale by heirs of the original defendant, 1541 n.

amendment of bill after, 1545.

appearance, none before, 1522.

by executors, though no service on testator, 1522 n.

appearance, entry of, when required to order for, 538, 1509 n., 1529.

entry of, by plaintiff for defendant, 481.

application may be made for, pending abatement, 812.

assignment, *pendente lite*, on, 281 and n., 1525.

bankruptcy of plaintiff, on, 63, 65, 1524, 1525.

[The references are to the star paging.]

REVIVOR — *continued.*

- motion for revivor or dismissal of bill, 68, 813, 814, 1543; or after decree for revivor or stay of proceedings, 814.
- bankruptcy of defendant on, 159.
- birth of party, on, 1524 and n.
- cases where simple bill of revivor was sufficient under former practice, 1507.
- where abatement could not be remedied by revivor according to former practice, 1508.
- co-executor, against, on proof of will, 1528.
- contempt, process of, issue and resumption of, after, 1545.
- corporation, sole, of suit by, 25, 1588.
- corporation, directors, 1511 n.
- costs for, not usually allowed, 1527.
- whether abatement on death of party to pay, or to receive costs, 1528.
- exceptions to rule, 1528.
 - any thing remaining to be performed, 1528.
 - death of one of several defendants to whom costs payable, 1529.
 - estate or fund, when costs payable out of, 1528.
 - taxation completed or postponed by arrangement, 1528.
- creditor's deed, motion for revivor or dismissal of bill, after execution by plaintiff of, 63 n., 814 n.
- creditor's suit, where plaintiff in dies after decree, any creditor who has proved his debt, may revive, 1540.
- custody, motion for revivor or discharge by person in, 1543.
- dean, of suit by, 28.
- death of corporation sole, on, 28, 1512 n., 1588.
- death of defendant, effect of revivor after, 1545.
 - against successor on determination of interest, 1519, 1520 n.
 - motion for revivor or dismissal on, 813, 814.
 - several defendants, in case of, 1529.
- death of husband, when not necessary on, 118, 114.
- death of joint tenant, not necessary on, 1511 n., 1541.
- death of one of next of kin, a co-plaintiff, on, 1527.
- death of party, when not necessary on, 1511 and n.
- death of personal representative, when not necessary on, 1511 n.
- death of co-plaintiff before decree, who entitled to revive on, 1588.
 - service of order, 1588.
- death of sole plaintiff before decree, who entitled to revive upon, 1537.
- death of plaintiff, none when determination of interest total, 1508, 1511 n., 1520 n.
 - effect of revivor after, 1545
- death of sole or co-plaintiff, motion for revivor or dismissal of bill on, 812, 813, 1511 n., 1538.
- death of one residuary legatee, a co-plaintiff, not necessary on, 1527.
- death of trustee, when not necessary on, 1511 and n.
- death of tenant-in-tail, where co-plaintiff, on, 1520.
- death of wife, in joint suit, on, 114.
- decree, after, who entitled to, 1539 and notes, 1540, 1541.
- decree, before, who entitled to, 1537, 1538.
- defence, 1546 n.
- defendant entitled to revive after decree, 813, 1589.
 - but should give notice, 1589.
 - effect of revivor by defendant, 1540.
- defendant not entitled to revive before decree, 1589.
- discharge of order for, grounds for, 1510 n., 1511.
 - application for, by whom and how made, 1511.
 - time for making, 1511.
- disclaiming defendant, revivor against representatives of, irregular, 710 n.
- effect of revivor, 1540, 1545 and n.
 - where cause has proceeded to final decree, 1545 n.
- upon conduct of cause, 1540.
- by defendant, 1540.
 - representative of former party, 1540.
- executor, against, 407 n., 1526; not ordered until probate, 1529 n.
- form of bill, 1509 n.
- formal defendant, representative of, not brought before the court by order for, 429.
- infants, 1525 n.
- injunction, motion for revivor or dissolution of, in cases of, 64, 1548, 1544, 1679, 1683.
- inspectorship deed, on execution of, 1525 n., 1526.

[The references are to the star paging.]

REVIVOR — continued.

jurisdiction, by person out of, security for costs, on, 29, 1527.
 liability of party added by, 1522 n., 1534.
 limitations, statute of, how far a bar to, 1526, 1527, 1542 and n.
 waiver of objection on account of, 1542.
 will run pending an abatement, 1543.
 except where there is decree to account, 1543.
 lunacy of defendant, on, 1525; of plaintiff on, 85.
 manner in which abated suits may be revived, 1509.
 in England, 1508, 1509.
 in several states, 1509 n.
 in United States courts, 1509 n.
 marriage of female plaintiff on, 118, 1515, 1538, 1539.
 want of order for, not a ground for bill of review, 118.
 order unnecessary, if husband dies before it is obtained, 118, 114.
 marriage of female sole plaintiff, motion for revivor or dismissal on, 813.
 marriage settlement, on execution of, 1525.
 master of hospital, of suit by, 23.
 motion for, or dismissal of bill, or stay of proceedings, before decree, 812 and n.,
 813-815.
 necessary, when, 1509 n.
 necessity for obviated, how far and where, 1511 and n., 2056 n.
 new committee on appointment of, 85, 1524.
 notice of the decree, by person served with, 1539, 1540.
 notice of the decree, when not necessary against person served with, 1517 n.
 order for, common, 1509-1511, 1524-1526, 1547.
 answer, when necessary, or leave given to, 1510 n.
 application for, how made, 1510 n.; by whom made, 1525, 1526; evidence not
 required on, 1510 n.
 discharge of, 1510 n.
 limitations, on ground of statute of, 1542.
 form of, against personal representatives of accounting party, 1526.
 instances of, 1524, 1525.
 time, right to, not barred by mere lapse of, 1526, 1527.
 parson, of suit by, 23.
 part, as to, of, in litigation, 1541.
 parties, 1579 n. (a).
 personal representative, when there is no, 1527.
 real estate, of suit relating to, by common order, 1525.
 receiver, motion for revivor, or discharge of, 1544.
 representative of the estate, against, when necessary, 1527.
 restoration of cause, in cause-book on, 977.
 security for costs, when required on, 29, 1527.
 sequestration, motion for revivor or removal of sequestration, 1060.
 service of order for, 1509 n., Add. vi. vii.
 (See SERVICE.)
 on whom to be served, 1509 n., 1510 n.
 original bill, in the nature of, 1508 n., 1546.
 difference between, and original bills in the nature of supplemental
 bills, 1546.
 by whom bills in nature of bills of revivor may be brought, 1546,
 1547.
 bill of revivor and supplement, 1546 and n.
 survival of interest, when not necessary, in case of, 1506 n., 1511 and n.

RIENS PER DESCENT,

creditor's action restrained after administration decree, though plea of, 1616.

RIFLE RANGE,

use of, when restrained, 1639.

RIGHTS,

bill claiming same by different titles, not multifarious, 844.
 distinct, bill by several plaintiffs, claiming multifarious, 344.
 general, bill by several plaintiffs, claiming, when not multifarious, 845, 846.
 bill to establish, against defendants distinctly interested, when not multifarious,
 841.

RIGHT (PETITION OF),

applicable, when, 181; when not, 133.
 costs on, 182.

VOL. III. — 49

[The references are to the star paging.]

RIGHT (PETITION OF) — continued.

double plea to, without Court's leave, 131 n.
fees on, 1606 n.
form and object of, 181.
grounds of, 133 n.
pauper, may be brought, or defended, as a, 182.
practice, present, in cases of, 182; former, 182.

RIGHT (WRIT OF),

trial of, after bill filed, plea of, 606.

RIVER,

breach of covenant to keep bank of, in repair, when restrained, 1655.
injury of bank of, restrained, 1639.

ROAD-BOOK,

piracy of, restrained, 1645.

ROLL,

solicitor struck off, rule as to professional confidence applies to, 1841.
striking solicitor off, power of the court to, 1840.

ROLLS (MASTER OF THE),

applications under statutory jurisdiction, when made to, 1851.
decree or order of, not reheard by Vice-Chancellor, 1474.
order for transfer of cause, when made by, 898.
orders of course usually made by, 1589; how drawn up, 1606.
secretary of, *caveat* against enrolment, when entered with, 1024.
signature of docket of enrolment of decree or order, 1028.

ROMILLY'S (SIR SAMUEL) ACT,

statutory jurisdiction under, 1853-1857.

(See CHARITIES. SIR SAMUEL ROMILLY'S ACT.)

ROTA,

conveyancing counsel, of, 1329.
registrars', of, 980 n.
taxing masters, of, 1445.
vacation judges, of, 985 and n.

RULES OF COURT,

power of court over, 1 n., 1493 n.

SALE,

bill to set aside different sales by same vendors to different purchasers, multifarious, 885, 886.
contract for, when complete, 1274.
expenses of, when a just allowance, 1228.
foreclosure, when directed instead of, 284 and n., 485 n., 1265, 1266.
 terms on which directed, 1266.
 value of land mortgaged, ascertained by, 284 n.
foreclosure, not ordered under prayer for sale, 379.
incumbered estate, parties to suit for sale of, and execution of trusts of surplus, 214, 215.
infant, of land of, not directed under ordinary jurisdiction because beneficial, 168.
 foreclosure, when directed instead of, 167, 168.
 partition suit, to raise costs of, 1163 n.
injunction, sale void if violating, 1683 n. (a).
judgment creditor, at instance of, 1036, 1037.
judgment or decree of, charged with, 1652 n.
land and minerals separately, of, under sanction of court, 1878.
married woman, of land of, to raise costs of partition, 1163 n.
mortgaged property, of, *pendente lite*, restrained when, 1652 n.
 partition suit, to raise costs of, 1163 n.
power of, renouncing executors who have, not necessary parties, 253.
 executors with, when they represent *cestuis que trust*, 223.
setting aside, under general prayer, 378 n.
trust property, of, injunction to restrain, 1652.

SALE (UNDER DECREE OR ORDER), 1264-1294.

abstract of title, preparation of, 1216, 1275, 1288.
 conveyancing counsel, reference of, to, 1829.
advertisement of, 1269 and n.
 reasonable notice, 1270 n.

[The references are to the star paging.]

- SALE (UNDER DECREE OR ORDER) — continued.**
- manner of making in New Jersey, 1270 n.
 - where order of notice not followed, 1270 n.
 - by error in judgment, 1270 n.
 - affidavit of result of, 1272.
 - agreement for purchase usually signed, 1273.
 - auction, by public, 1297–1274, 1282 n.
 - auctioneer, renumeration of, 1268.
 - sale, how conducted by, 1271, 1272.
 - bid fairly claimed by two or more persons, course in New Jersey, 1282 n
 - bids by auctioneers, appraisers, &c., 1271 n. (a)
 - cestuis que trust, not represented by trustees on, 222.
 - compensation, amount of, how determined, 1268, 1283 and n.
 - completion, time for, 1274, 1275.
 - method of completing, 1274.
 - by purchaser, 1274, 1275.
 - conditions of sale, on, 1269.
 - conduct of, 1267; stranger, when committed to, 1287.
 - confirmation of Master's report of sale, 1274, 1281.
 - sale not complete before, 1274, 1281.
 - contract not complete till report confirmed, 1274, 1275.
 - conveyance, settlement, and execution of, 1261, 1262, 1279 n.
 - (See CONVEYANCE.)
 - how prepared, 1279.
 - execution of, enforced, 1279.
 - costs, to raise, 1456.
 - costs of mortgagees consenting to, 1265, 1424.
 - decree, sale must be according to, 1275.
 - purchaser must see that sale is according to, 1275.
 - but not effected by error in it, 1276.
 - default by purchaser, remedy for, 1281, 1282.
 - delivery of abstract on, how compelled, 1216, 1275.
 - deposits, payment of, into court, 1272; how enforced, 1272, 1273.
 - return of, on discharge of purchaser, 1292.
 - direction of the Master, to be under, 1267.
 - discharge of purchaser, when permitted, 1276, 1281, 1282 n., 1284.
 - not let off, by submitting to forfeit deposit, 1284 n.
 - error, not invalidated by, 168, 1278.
 - frauds, statute of, not within, 657, 1283.
 - guardian *ad litem*, not allowed to bid at, 1271 n.
 - hearing, when directed before the, 1264.
 - heir may come in and take benefit of the contract, 1283.
 - incumbered estate, of, 1264.
 - consent of incumbrancer, with, 1265.
 - effect of, on his right to interest, 1265.
 - paying off incumbrances out of the purchase-money, 1278.
 - interest on purchase-money, 1275, 1277.
 - irregularity, not invalidated by, 168, 1276.
 - leave to bid at, when necessary, 1271; how obtained, 1271 and n.
 - life-estate, of, purchaser when bound, 1275 n., 1277.
 - lots, when sale of should be made in separate, 1271 and n.
 - when not so made, 1271 n.
 - married woman, binding on, 187.
 - Master's office, in, 1264–1294.
 - with the approbation of Master, 1267.
 - should be made under Master's immediate direction, 1267 and n., 1268.
 - auctioneer, 1268.
 - modes of, 1267, 1292.
 - opening biddings, on, 1285–1292.
 - American practice, 1285 n., 1286.
 - (See BIDDINGS, OPENING.)
 - order for, form of, 1264.
 - particulars of sale, preparation of, 1269 and n.; settlement of, 1269.
 - distribution of, 1270.
 - timber, on sale of, 1272, 1273.
 - payment in of purchase-money on, 1276, 1278, 1282, 1775.
 - (See PURCHASE-MONEY.)
 - possession, when purchaser entitled to, 1276, 1277.
 - private contract, proceedings on, 1292–1294.

GENERAL INDEX.

[The references are to the star paging.]

SALE (UNDER DECREES AND ORDERS) — continued.

- conditional contract, 1293 ; confirmation of, how obtained, 1293.
- production of title-deeds, by incumbrancer, who consents to sale, 1285.
- purchaser, notice of motion to pay in purchase-money, 1276
 - liable for interest, 1276, 1277 ; entitled to rents, 1277.
 - taking possession without order, 1277 and n.
 - must see that sale is according to decree, 1275 and n., 1284 n. (a).
 - two purchasers of one lot must join in payment, 1278.
 - right of purchaser to pay in purchase-money without prejudice, 1278.
 - notice to, of paying out, 1278, 1279.
 - enforcing order to be let into possession, 1279.
 - incompetent or insane, 1281, 1282.
 - absent, 1283.
- raising money by, 1344—1346.
 (See **RAISING MONEY BY SALE OR MORTGAGE.**)
- receiver not allowed to bid at, 1271 n.
- reference to Master to settle draft, 1279.
 - of title, 1275, 1282.
- rents, where purchaser entitled to, 1277.
- resale at a profit before purchase confirmed, 1285 and notes.
 - where agreement for, on purchaser's failing to comply with conditions, 1283 n.
 - where property sacrificed, 1284 n.
- reserved bidding, how fixed on, 1268, 1269, 1271.
- restrained, may be, where, 1284 n.
- result of, affidavit of, 1272.
 - certificate of, 1272, 1274.
- sequestration, when ordered under, 1054 ; application for, how made, 1054.
- setting aside, 1286 n. (a), 1290 n. (a), 1294 n. (a).
- solicitor conducting, agent for all parties, 1287.
- stage of cause at which directed, 1284.
- stock of, 1810, 1811 ; registrar's direction for, 1810.
 - mode of effecting, 1811.
- substitution of another purchaser, when allowed, 1285.
- surplus of fund raised by, when real estate, 1159.
- timber, of, proceedings on, 1272, 1273.
- time fixed for sale, 1270.
 - reasonable notice, 1270 n.
 - effect of not complying with order in reference to time, 1270 n.
- title, inquiry into, when directed, 1275, 1276, 1282 and n.
 (See **TITLE.**)

- title, investigation of, on, 1215, 1216, 1217.
 - what the purchaser has a right to require, 1282 notes.
 - objections on, 1217 ; how dealt with, 1217 *et seq.*
- title-deeds, delivery of, to purchaser, 1280 ; lots, when sale in, 1280.
- trustee not allowed to bid at, 1271 n.
- unsold lots, new sale of, 1293.
- validity, 1276 n. (a).
- vendor upon, duty of, 1275 n.
- vendor, method of enforcing contract on behalf of, 1280.
- rescinding contract, circumstances which justify, 1284.
 - mistake when, 1284 n.
 - surprise, and misrepresentation, 1284 n.
 - sacrifice of the property, 1284 n.
 - rights of purchaser, when purchaser rescinded, 1285
- party by purchasing submits to the jurisdiction of court, 1281 n.
 - may be compelled to complete purchase by attachment, 1281 n.
 - so of a surety for purchaser, 1281 n.
 - order to pay purchase-money must be first passed, 1281 n.
- method of completing contract, 1274 *et seq.*

SANCTION (OF CHARITY COMMISSIONERS),

- required to proceedings on behalf of charities, when, 16 n., 311, 1851.

SANCTION OF THE COURT,

- institution of suit, when necessary for, 310.
- absence of, usually not a ground of objection by defendant to suit proceeding, 311.
- application for, and necessary evidence, 310.
- required, to consent to deviation from ordinary procedure, given by next friend of infant, 74 ; of person of unsound mind, 86 ; of married woman, 112.

[The references are to the star paging.]

SANCTION OF THE COURT — *continued.*

by committee of lunatics, 86, 178.

by guardian *ad litem* of infant, 164; or of person of unsound mind, 178.

trustees to proceedings by, when necessary, 1842, 1843; how obtained, 1842, 1843.

SANCTION OF LORD CHANCELLOR OR LORDS JUSTICES,

necessary to institution of suit by committee on behalf of lunatic, 85, 811; to defence by, 175; and to his consent to deviation from ordinary procedure, 86, 178.

SANITY,

testator of, must be proved in suit to establish will, 875.

SARK (ISLE OF),

mortgage of land in, when Court of Chancery has jurisdiction over, 629.

seas, not beyond, within 21 Jac. 1, c. 16 (statute of limitations), 648.

SATISFACTION,

lis pendens, of, how entered, 400, 401.

registry of decree, order, or writ of execution, of, 1035.

SATURDAY,

hours for service of proceedings, not requiring personal service, 455.

SCANDAL, 347-350.

allegation of general malice or personal hostility unconnected with acts complained of, scandalous, 348.

affidavit to be used in chambers, in, remedy for, 895; to be used in court, 894.

answer in, 732 n., 733, 759; in heading of, 732 n.

to interrogatories for plaintiff's examination, 1555.

chambers, in proceedings at, remedy for, 354, 894.

contemnor may apply for removal of, 507.

costs, occasioned by, 355.

definition of, 347.

demurrer, not a ground for, 349.

exceptions for, 351, 759 and n.

(See EXCEPTIONS FOR SCANDAL.)

expunged, how, 854; amendment of office copy after, 854.

file, taking pleadings and documents off, for, 785.

imputation of corrupt or vindictive motives in suit to remove trustee, not, 348.

injunction not granted, if any in bill, 854, 1671.

material, any thing which is, not scandalous, 347.

objection for, may be taken by the court, 351.

by person not a party to the cause, by special leave, 351.

how taken, 350, 351.

pauper, costs of when introduced by, 42.

petition in, 1605.

plea in, 686.

statement of particular immoral acts provable under general charge scandalous, 348.

SCANDALOUS WORDS,

against court or its process, punishment for, 456 n., 1069, 1070.

SCHEDULE,

affidavit, to, reference to, 895, 896.

alterations in, how authenticated, 896.

answer, to, when used for the answer to the interrogatories, 726, 727; in aid of defendant's own case, 727.

addition of, by amendment, when permitted, 733.

impertinent, when, 727.

office copy of, how obtained, 758.

paper on which written, 742, 743.

printing, 756 n.

signature of defendant to, 733, 746; of official to, 746.

when taken by commission, 751, 752.

decree or order may be used in, when, 1006, 1805.

error apparent in, rectification of, when permitted, after enrolment, 1031.

SCHEME,

Chambers, settlement of, at, 1857.

SCIENTIFIC PERSON,

assistance of, how obtained, 983.

(See EXPERT.)

[The references are to the star paging.]

SCIRE FACIAS,

nature of, and proceedings by, 1757-1763; fees on, 1758 n.

SCOTCH LAW AGENT,

communication, with, privileged, 577.

SCOTLAND,

answer, how taken in, 747.

applicant or plaintiff resident in, must give security for costs, 28.

injunction to restrain proceedings in courts of, 1626.

law of, as to wife's *chase in action*, 128.

ne exeat, against person domiciled in, 1703.

security for costs from plaintiff or applicant resident in, 28.

witness in, attendance of, how compelled, 918.

SCRIVENER,

communication to, privileged, 576.

SEAL (COMMON, OF CORPORATION AGGREGATE),

answer put in under, 146 and n., 735 and n., 746.

proceedings where custodian refuses to affix it, 146.

may adopt any form of seal for the occasion, 146 n., 735 n.

plea put in under, 688.

thirty years old, does not prove itself, *semble*, 874.

SEARCHES,

Accountant-General's office, in, when made, 1786.

affidavit of, on investment in purchase or mortgage of land, 1341.

SEAS,

absence beyond, of creditor, not a bar to statutes of limitations, 647, 652 n.

SECOND SUIT (FOR SAME MATTER),

administration of estate for, practice in case of, 635.

course, where second more extensive than first, 632, 638.

dismissal of, on continued neglect to pay costs of former suit, 796.

infant's, for, practice in case of, 69, 70, 634.

needless costs of, 1394.

plea of pending of, 682-635.

stay of, till payment of costs of former suit, 796, 811, 1457, 1458.

pauper, when suit by, 39.

SECONDARY EVIDENCE,

documents, of, when admitted in equity, 878, 879; at law, 878.

will, of contents of, when admitted, 878.

SECRETARY OF LEGATION OR EMBASSY (BRITISH),

answer, when sworn before, 745.

SECRETARY OF STATE,

India, for, answer of, not put in on oath, 734.

SECRETS,

disclosure of, when restrained, 1650, 1651.

SECURITIES,

collateral, surety, when not necessary party to suit as to, 269, 270.

delivery up of, costs of suit for, 1386, 1898.

delivery out of court, how effected, and certificate of, 1812.

deposit in court, how effected, 1789.

description of, in decree or order, 1005, 1783.

suit to set aside, offer by plaintiff, to pay what is due, necessary in, 386.

SECURITY,

costs for, 27-36, 358, 359, 1571.

deposits on sales, for, how taken, 1272.

receivers and managers, how taken from, 1736.

SECURITY FOR COSTS. (See Costs, SECURITY FOR.)

SEISIN,

avertment of, in plea of fine, 676.

of purchase for value, without notice, 676.

bill, how alleged in, 362.

of things manurable or immanurable, 362.

SENTENCE.

foreign court, of, plea of, 664.

SEPARATE ACCOUNT,

application to deal with fund standing to, how made, 1796.

class, form of application, where applicant one of a, 1797.

[The references are to the star paging.]

SEPARATE ACCOUNT — *continued.*

costs, when fund paid to, 1481.

application for payment out when only applicant interested, of, 1611 n., 1798.

evidence on, application to deal with fund, 1797.

fund, when paid to, 1431, 1794; effect thereof, 1794, 1795.

married woman, carrying over to, when directed in case of, 92, 1874, 1795.

mistake in carriage to, bill of review does not lie for, 1579, 1795.

service of application to deal with fund standing to, 1806, 1797.

SEPARATE ESTATE OF MARRIED WOMAN,

answer, bound by joint, of wife and her husband, 185.

or her separate answer, 185.

application by married woman with respect to, must be by next friend, 110.

charged, how, 186, 187.

contract, fraud, or breach of trust, by, 187.

testamentary charge of debts, by, 186.

when with wife's debt, 1903 n.

cost of wife's suit, liable to, 113.

leave to apply for payment of costs out of, 187.

demand on, not barred by statute of limitation, 642.

discovery as to, when married woman bound to give, 183.

examination, married woman may dispose of, without, 100.

except to husband, 100.

husband may be sued by wife in respect of, 110; may sue wife, 109, 179.

effect of his suit, 179 n.

husband should not be co-plaintiff or next friend in wife's suit for, 108, 109.

liability of, for her debts and engagements, 113 n., 186.

payment of, out of fund settled to, form of order for, 1800.

plea of previous suit by husband and wife, bad, to suit for, 108, 636.

separate defence and answer in suits relating to, 181.

suit for, by husband and wife, plea of husband's release in, 109 n.

suit for, by wife, must be by next friend, 108, 109.

suit relating to, prosecuted against wife alone, though husband a co-defendant, but out of the jurisdiction, 179.

trustee of, costs of, 1411 n.

SEPARATION DEED,

husband restrained from breach of covenants of, 558.

SEPARATIST,

affirmation of, how taken, 898.

answer of, how taken, 746.

SEQUESTRARI FACIAS (WRIT OF),

applicable, when, 1065.

execution of, 1066.

fees on, 1065.

filings, 1065.

indorsement of, 1065.

preparation and issue of, 1065.

return of, 1066.

SEQUESTRATION,

abatement, effect of, on, 1059.

motion for revivor or renewal of sequestration, 1066.

answer, for want of, 494–496.

corporation aggregate of, 497.

execution of, 495.

privileged person, against, 496.

sergeant-at-arms return of *non est inventus*, on, 494.

sheriff's return of *non est inventus*, on, 494; affidavit necessary, 494.

appearance, for want of, 472–475.

corporation aggregate, against, 477, 478.

application for orders *nisi* and absolute, how made, and evidence, 477.

discharge of, 478.

form of, 478.

preparation and issue of, 478.

return of, 478.

officer of the court, against, 474.

privileged person, 472–475.

application for orders *nisi* and absolute for, how made, evidence and service, 478.

discharge of, 474.

entry of appearance by plaintiff, on return of, 475.

[The references are to the star paging.]

SEQUESTRATION — *continued.*

- form of, 474.
issue of writ, 474.
personal service of order *nisi*, when dispensed with, 478.
application of proceeds of, 1051, 1052.
attachment, previous issue of, when not necessary, 468, 1048.
bankruptcy, in, 1051 n.
beneficed clerk, against, 1051.
choses in action, effect of, upon, 1052.
corporation aggregate, against, effect, 497, 1051 n.
 appearance, for want of, costs of, 478.
 discharge of, 478.
 orders *nisi*, and absolute necessary, 477.
 preparation and issue of, 478.
 return of, 478.
costs, for non-payment of, 1455.
decree or order, for non-obedience to, 1067.
 injunction or restraining order, for breach of, 1687.
costs, for non-payment of, issue of, 1454.
 corporation aggregate, against, 1455.
 privileged person, against, 1454.
 solicitor, against, after attachment, 1454.
costs of, 1061.
death of contemnor, effect of, on, 1059.
decree or order, for non-obedience to, 1047–1061.
 attachment, previous issue of, when not necessary, 1048 n.
 corporation aggregate, against, 1067.
 irregularity in attachment, not issued if any, 1048.
 payment of money to enforce, 1045, 1046.
 privileged person, against, 1066.
 sergeant-at-arms, on contemnor being brought up by, 1049.
 return of "detained," on, 1049; of *non est inventus*, on, 1049.
 sheriff's return, "attached and imprisoned" or "detained," on, 1048.
 of *non est inventus*, on, 1048.
defect of proceedings by, 1032, 1033.
discharge of, 1059; when issued against corporation aggregate, 478; *mesne process*,
 when issued on, 474, 477, 478; refused, when, 1052.
dower of contemnor's widow, not prejudiced by, 1060.
equerry, salary of, not taken under, 1053.
examination, *pro interesse suo*, in case of, 1057–1059.
 (See *INTERESSE SUO*, EXAMINATION PRO.)
execution of, 1051, 1052.
 answer, when for want of, 495.
 application of proceeds to satisfy claim, 1051.
fees on, 1051 n.
foreign suit, in, 149 n.
form of, 1051; when against privileged person, 475.
fraudulent alienation, effect of sequestration, not prevented by, 1055.
half-pay, not taken under, 1053.
indorsement on, 1051.
injunction on restraining order, for breach of, against privileged person, or corpora-
 tion aggregate, 1681.
irregularity in, waiver of, 1050.
issue of, 1051.
jointure of contemnor's widow, not prejudiced by issue of, 1060.
lands, effect of, on, 1051 n., 1054, 1056.
leaseholds not sold under, 1054.
mesne process, on, effect of death of contemnor on, 478, 477, 495, 1059.
 discharge of, 474, 478, 1059.
 proceeds not applied under, 1051, 1052.
 what may be taken under, 1053, 1054.
nature of, 1050.
officer of the court against, for non-appearance, 474.
origin of, and history of, 1050.
pension, what may be taken under, 1053.
personal estate, effect of, upon, 1052.
preparation of, and issue of, 1051.
privileged person, against, for want of answer, orders *nisi*, and absolute for, neces-
 sary, 496; application, how made, and evidence, 497; sufficient cause against
 making order absolute, what is, 478.

[The references are to the star paging.]

SEQUESTRATION — *continued.*

- appearance, for want of, 473; when service of order *nisi personal*, dispensed with, 473.
- costs, for non-payment of, 1455.
- decree or order, for non-obedience to, 1066, 1067.
- order *nisi*, how obtained and served, 1066.
- absolute, how obtained, 1067.
- form, issue and discharge of, 474.
- injunction or restraining order, for breach of, 1687.
- pro confesso*, issue of, when bill taken, 527, 1061.
- no proceeding to be taken on, without leave, 527.
- receiver, effect of appointment of, on, 1059, 1741.
- return to, 478, 1051; not filed, 478, 1051.
- revivor of, 1059, 1060.
- sale under, when ordered, 1054; application for, how made, 1054.
- sale of land after, at instance of judgment creditor, 1038, 1055, 1056.
- second, how obtained, 1051.
- time from which property affected by, 1057.
- voluntary conveyance, when not defeated by, 1057.

SEQUESTRATORS,

- abuse of power by, remedy for, 1061.
- accountable for receipts, 1055.
- accountable persons, should be, 1051.
- articles in possession of contemnor, power of, to seize, 1053, 1056.
- assistance, writ of, when issued to put in possession, 1056.
- attornment by tenants to, 1054, 1055; how compelled, 1055.
- bishop, necessary party to suit against, when, 208.
- disturbance of possession of, a contempt of court, 1056.
- ecclesiastical benefice, of parties to suit against, 207.
- fees of, 1061.
- injunction to restrain proceedings against, 1058.
- let lands, power to, when given, 1055.
- lunatic incumbent, necessary parties to suit by, for tithes, 208.
- number of commissioners, 1051.
- powers of, over personal estate, 1053, 1058; over real estate, 1054, 1055.
- professional persons, commissioners need not be, 478 n., 1051 n.
- tithes, not necessary parties to suit by incumbent for, 208.

SERGEANT-AT-ARMS,

- appearance, order for, not made in order to compel, 471.
- costs, on bringing up contemnor by, 508.
- fees of, order for, not discharged without payment of, 1048, 1049.
- messenger, on vacancy, in office of, defendant brought up by, 490.
- non est inventus*, order for, on messenger's return of, 490.
- on sheriff's return of, to attachment for want of answer, 494.
- affidavit necessary, 494, 495.
- on sheriff's return of, to attachment for non-obedience to decree or order, 1048;
- order for, how obtained, 1048.
- on sheriff's return of, to attachment for non-payment of costs, 1454.
- plea, filing of, irregular after order for, 691.
- second order for, when necessary, 1049 n.

SERVICE,

- absconding defendant out of the jurisdiction, on, 449.
- affidavit of service, form and contents of, 898.
- appeal, of order to set down, 1484.
- appeal to House of Lords, of order to answer, 1494.
- bill, of copy of, 478; in cases of husband and wife, 445 n.
- charging order *nisi*, of, 1041.
- committal, of order *nisi*, for, 1686.
- decree or order, of copy of, 1045.
- demurrer, of order to set down, 595.
- exceptions, of notice of setting down, 768.
- further consideration, of notice to set down, on parties, 1873.
- on purchaser, 1873, 1374.
- on person who has obtained stop order, 1874, 1375.
- interrogatories, of, 489 and n.
- irregularity in, effect of, 898, 1597.
- minutes of appointment, to settle, 1012.
- minutes, to be left on bespeaking, 1010.

[The references are to the star paging.]

SERVICE — *continued.*

- notice of motion, of, 1597.
appeal motions of, 1487.
committal for breach of injunction, 1686.
de bene esse, for order to use depositions taken, 940.
decree, for, of, 826.
dismissal of bill for want of prosecution, of, 807.
irregularity in, effect of, 1597.
time for filing, 1597.
notice to purchaser of dealing with purchase-money, 1011, 1373, 1803.
notice of time of examination, of, 908.
order *nisi*, of, 1598 ; for sequestration, 478, 496, 1066.
order to attend examiner, of, 908.
pass decree or order, of appointment to, 1015.
petition, of, 1608 n., 1609 ; time for filing, 1597.
plea, of order to set down, 698, 694.
production of documents, of order for, 1823 and n.
sequestration, of order *nisi* for, 478, 496, 1066.
subpoena, of, to show cause against decree, 171 ; for costs, 1453 ; to hear judgment, 969, 970, 977, 978 ; *ad testificandum*, 908.
summons, of, 1336, 1887 ; for time to answer, 740, 741.
traversing note, of, 515, 1010.
warrant of Taxing Masters, of, 1448.
writ of, 898.
affidavit accompanying bill, of, 396, 1563.
affidavits in support of motion for decree, of, where service out of the jurisdiction, 820 and n.
amended bill, of, 429, 446 and notes ; clerical error, after rectification of, 410 n. ; on formal defendant, 429.
amendment of bill, of order for, 422 ; of summons for, 414.
amendment and exceptions, of order to answer together, 770.
appeal, of order to set down, 1483.
House of Lords, to, of notice of, 1498.
answer, of order to, 1494 ; in case of determination of session, 1496.
affidavit of service of order to answer, 1494.
order to set down, of, 1498.

[The references are to the star paging]

SERVICE — *continued.*

- foreign minister, on, 448 n.
infants, in case of, 448.
order for, how obtained, form of, and service of, 448.
partners on, 448 n.
solicitor, on, 448.
statute, under, 449.
wife, upon, 448.
Sunday, irregular if on, 443.
written bill, of, 442.
charging order, *nisi*, of, 1040; absolute of, 1041.
company, public, on, how effected, 445.
commissioners to take answer, of order to name, 749.
committal for special contempt, of, notice of, motion on order *nisi*, for, 1686.
Confirmation of Sales Act, of petition under, 1874.
contempt, in cases of, 453; substituted, when permitted, 1685.
corporation aggregate, of bill upon, how effected, 445; indorsement on copy of bill, 441.
decree or order, of, on, 445, 1044.
foreign corporation, having office within the jurisdiction, on, 149 n., 1596.
injunction, of writ of, on, 1674 n.
costs, and expenses of, and attending, allowance of, 1489.
course, of order of, 1590.
cross-bill, of, 1550 n.
cross-examination, of notice to produce witness for, 913.
of notice of, on other side, 914; where examination *de bene esse*, 938.
of notice of, on witness, 938.
de bene esse, of order for examination, 938.
declaration of Title Act, 1862, of petition under, 1865.
of order *nisi* for declaration under, 1866.
decree or order, of, 527, 1042–1045; demand unnecessary, 1045.
costs of, allowance of, 1439.
how effected, 1044.
indorsement on copy for, 1043.
(See INDORSEMENT.)
substituted, when permitted, 1044, 1045, order for, how obtained, 1045.
how effected, 1045.
jurisdiction, where person out of, 1044.
decree or order, of appointment to pass, 1014.
defendant not appearing in due time, on, 456, 1335, 1596, 1607.
jurisdiction, out of, 456.
demurrer, of order to set down, 594, 595; time for, 595.
witness of, of order to set down, 944.
dismissal of bill by plaintiff, of notice of motion for, 791.
distringas to restrain transfer of stocks, of writ, of, 1692.
election, of order for, 816.
evidence of summons to enlarge time for taking, 890.
evidence taken after closing of evidence, of application for leave to use, 890.
examination, of notice of, on other side, 914, *de bene esse*, where evidence taken, 938.
examination, of notice of, on witness, 907, 908.
examiner, of order to attend, 908.
exceptions for insufficiency, of notice of setting down, 768, 770.
execution of commission to take answer, of notice of, 750.
examination *de bene esse*, of order to take, 938.
exhibits, of order to prove at the hearing, 884.
formal defendants, of copy of the bill on, 429; time for, 429.
husband and wife, in case of, 429.
substituted, not directed, 429.

[The references are to the star paging.]

SERVICE — *continued.*

- hours for, when personal service not required, 455.
- husband and wife, of bill on, 445.
- husband out of the jurisdiction, of bill on, 452.
- husband, of notice of decree on, 433.
- infant, of copy of the bill on, 444; out of the jurisdiction, 452.
of notice of the decree on, application for directions as to, and evidence, 433, 434; how effected, 434.
- injunction, of notice of motion for, 1596, 1666, 1667.
minutes of order for, of, 1673.
- notice of motion to dissolve, of, 1675, in interpleader suits, 1568, 1676.
writ of, of, 1674.
- interim order, of, 1674.
- interpleader bill and accompanying affidavit of no collusion, of, 1563.
- interrogatories, of, how effected, 480 and n., with bill, 438 and n.
amended, of, 486.
- dispensed with, when, 520.
- jurisdiction, out of the, 451, 481.
order for, how obtained, 481; form of, 452, 481.
served with bill, should be, 451, 452, 481.
- non-appearance of defendant, in case of, 480.
- substituted service of, and leave for, how obtained, 481, 482.
time for, 480; extension of, application for, how made, 481.
costs of application, 481.
- interrogatories, copies of, for, 482; interrogatories to be contained in, 482.
amendment of, 486.
- fee for marking, 482 n.
- indorsement on, 482.
number required, 482.
- interrogatories for examination of plaintiff, of, 1554.
- interrogatories to petition of right, of copies of, 131.
- investment of fund in court, of application for, 1750.
- judgment creditors, on, of order for sale of land, 1088.
- jurisdiction, out of the, 449–453.
bill, of, when necessary, 152, 154, 449, 450.
application for order, how made, 451.
evidence, *prima facie*, only, necessary on, 451.
defendant not appearing in due time, on, 456.
discretionary with court, 452.
general order, under, 450.
indorsement, in case of, 441, 453.
irregularity, how set aside for, 453; evidence in support of application, 453.
leave for, when refused after decree, 152.
order for, fixes times for appearance and answer, 450, 451, 452, 453.
principles on which times fixed, 452, 453.
served with bill, must be, 452.
- service, how effected, 452.
statute, under, 449; substituted, under statute, 450.
where defendant out of commonwealth or State, in United States, 457 n.
service personally or by publication, 457 n.
in case of infants, 457 n.
- statutes authorizing proceedings on constructive notice by publication, strictly construed, 457 n.
certificate of printer, 457 n.
on other proof of publication, 457 n.
- publication where defendant is not in fact non-resident, 457 n.
in Alabama and Kentucky, 457 n.; other States, 457 n.
in New Jersey, foreign publication necessary only where all the defendants are non-residents, 457 n.
- remarks of Sargent, J., in New Hampshire, on extraordinary or substituted service, and the effect to be given it, 457 n., 458 in note.
- interrogatories, of, 450.
order for, how obtained, and form of, 481.
served with bill, 451, 452 n., 481
- notice of the decree, of, 433; order for, how obtained, and evidence, 434, 435.
- notice of motion, of, 1595, 1596; application for leave for, how made, 1596.
how service effected, 1595, 1596.
- notice of motion for decree, of, 819, 820; leave for, how obtained, 820.
time for filing defendant's affidavits, when leave given, 820, 821.

(The references are to the star paging.)

SERVICE — *continued.*

- notices, of, 456 n.
petition, of, 1607; application for leave for, how made, 1607.
 service, how effected, 1607.
replication, of notice of filing, 831, 832.
summons, of, when permitted, 449 n., 1386.
 traversing note, of, not permitted, 514.
leave to attend proceedings, of order giving, 437.
leave for defendant out of jurisdiction to come in under decree, of order giving, 154.
letter missive, of, 445, 446.
lunatic, on, 444 n.
married woman, of copy of the bill on, 445; where formal defendant, 428.
 of notice of the decree on, 438.
minuteman, of appointment to settle, 1012.
next friend, of order appointing new, of infant, 77, 78; of married woman, 112.
nisi, of order, 1593; for committal, 1686.
non-residents, upon, 149 n., 887 n.
notice, of, when personal service not required, 455, 456.
 costs of, allowance of, 1489.
 on defendant not appearing in due time, 456.
 on person not a party, 456.
notice of enlargement of time for filing affidavits on motion for decree, 822.
notice of reading affidavits, of, 899.
 defendants in chief on motion for decree, 821.
 plaintiffs in reply on motion for decree, 821.
notice of the decree, personal, necessary, unless dispensed with, 433.
jurisdiction, out of, 433, 434; order for, how obtained and evidence, 434.
post, service of, by, how authenticated, 435.
special service, when directed, 435.
 application for order for, how made, 484, 485.
 substituted, 484; order for, how obtained, 485.
notice of motion, of, 456, 1595–1597.
affidavit of service of, 1597; when to be filed, 1597.
appeal motion, in case of, 1603.
appearance before expiration of time, leave for, necessary, 1596.
committal for breach of injunction, for, 1684, 1685.
 substituted, when permitted, 1685.
creditor's action, to restrain, 1617.
effected, how, 1597.
jurisdiction, out of, 1596; leave for, how obtained, 1596.
length of time for making, 1596.
non-appearing defendant, on, 456, 1596.
personal, when necessary, 1595.
persons not parties, on, how effected, 1596.
short, leave for, when given, 1596, 1597.
special leave for, when necessary, 1594, 1596, 1667.
substituted service of, 1596; leave for, how obtained, 1596.
 foreign corporation, in case of, 1596.
notice of motion for decree, of, 819, 820; extension of time for, 819.
 jurisdiction, out of, 820.
 leave for, how obtained, 820.
 substituted service of, 820.
open biddings, of application to, 1291.
pass decree or order, of appointment to, 1014.
Parliament, on member of, 444.
 dwelling-house, what is, for purposes of, 444.
partnership, upon, 145 n., 149 n., 445 n.
party acting in person, on, how effected, 455.
pauper, of order for admission as, to sue, 41.
peerage, person having privilege on, bill on, 444, 445.
 at dwelling-house of, 444.
person not party, on, how effected, 456.
personal, of proceedings when necessary, 453; time for effecting, 455 n.
petition of, 1606, 1607.
 appearance, after expiration of time for, 456, 1607.
 costs of, allowance of, 1489.
 effected, how, 1607.
 jurisdiction, out of, 1607.

[The references are to the star paging.]

SERVICE — *continued.*

- length of time, and time for making, 1606, 1607.
- personal, when necessary, 1607.
- persons not parties, on, how effected, 1607.
- substituted, 449 n., 1607.
- petition of appeal from order on petition, of, 1612.
- petition of right, of, and sealing copies for, 182.
- plea, of order to set down, 693.
- poverty of defendant in contempt for not answering, of order for inquiry and summons to proceed thereon, 501.
- prisoner, of copy of the bill upon, 443 notes.
- personal service on, 443 n.
- pro confesso* decree, of, 527.
- application to dispense with, when made, 528.
- of notice of, where not absolute, 527; time to be inserted in notice, 527.
- proceedings, not requiring personal service, of, 458, 454, 455, 456.
- times for effecting, 455.
- publication, by, 149 n.
- receiver's account, of summons to proceed on, 1752.
- receiver, of application for discharge of, 1765.
- receiver, of notice of motion for, 1735, 1786.
- special leave, where necessary, 1735.
- replication, of notice of filing, 881, 882; out of the jurisdiction, 882; substituted, 882.

(See NOTICE.)

- restoration of written bill, of notice of motion for, 897.
- restraining order, of, 1674, 1690.
- review, of application to file bill of, or in the nature of, 1578.
- of application to take off file, bill of, 1579.
- revivor or dismissal or stay of suit, notice of motion for, 63, 812–814.
- revivor order, of, 1509, 1510 in n.
- how effected, 1509 n., 1510.
- effect of, 1509, 1510 in n.
- substituted service of, 1509 n.
- Romilly's (Sir S.) Act, of petition under, 1856.
- security for costs, of order for, 88.
- separate account, of application to deal with fund standing to, 1606, 1797.
- separate answer of husband, of application for leave for, 180; where husband in custody, 181.
- separate answer of wife, of application for, by plaintiff, 185.
- sequestration, of, order *nisi* for, against corporation aggregate, 477.
- privileged person, against, 478, 1068.
- substituted, when permitted, 478, 474, 1068.
- set aside award, of application to, 1858.
- short cause, of notice of marking cause as, 972 n.
- for hearing, for further consideration, 1871.
- cause originating in chambers, 1872.
- solicitor, on, how effected, 454; hours for, 455.
- solicitors on, of order for payment of money by the firm, what sufficient, 1591.
- stop order, of application for, 1695; of notice to deal with fund after, 1697.
- submission to arbitration, of application to make, a rule of court, 1858.
- subpoena*, writ of, in United States courts, and in the State courts, 439 n., 443 n.
- served by delivery to person, or leaving at dwelling-house, &c., 443 n.
- by whom served, 448 n.
- return by officer, 448 n.
- must be within jurisdiction, 443 n.
- accepting service out of jurisdiction by agreement, 443 n.
- at place of abode, 443 n.
- defendant in prison, 443 n.
- on infants, 444 n.
- lunatic, 444 n.
- corporation, 445 n.
- Attorney-General where State interested, 446 n.
- on Governor and Attorney-General, where one State sues another, 446 n.
- subpoena*, of, time for, 907; failure of, not a discontinuance, 441 note.
- subpoena ad testificandum*, of, 884, 907.
- subpoena* to show cause against decree, of, 171; substituted service of, 171.
- affidavit of service of, 171.
- subpoena* for costs, of, 1452–1454.

[The references are to the star paging]

SERVICE — *continued.*

- affidavit of service of, 1453.
effected, how, 1452; demand necessary, 1453.
jurisdiction, must be within, unless otherwise ordered, 1452.
substituted, when directed, and how applied for, 1452.
void, if on person under illegal arrest at instance of same party, 1452.
subpoena duces tecum, of, 885, 907.
subpoena to hear judgment, of, 968, 969; in United States, 967 n.
bankrupt defendant, on, not necessary, 968.
cross causes, in case of, 975.
defendant, when cause set down by, 964 n., 968.
effected, how, 968.
implied, in undertaking to set down cause, 969, 970.
invalid, consequence of, 964, 979, 980.
irregularity in, how waived, 969.
new service, not necessary, on revivor after plaintiff's death, 969.
solicitor concerned for several defendants, where, 968 n.
stand over, for want of parties, when cause ordered to, 969.
time for, 968.
subpoena to name new solicitor, of, 455; when substituted, 460.
substituted, principles on which directed, 447; instances of, 448; in United States courts, 447 n.
bill, of, 447, 448; under statute, 450.
action, to restrain, 447.
agent, on, 447; on solicitor, 448 n.
application for leave for, how made, and evidence, 449.
contempt in cases of, 458 and n., 1685.
cross-bill, of, on plaintiff in original suit, not allowed, 447; allowed in United States courts, 447 n.
decree or order, of, when permitted, 1044.
effected, how, 1045; order for, how obtained, 1045.
foreign government, in suit against, 141 n.
formal defendants, not directed on, 429.
order for, form of, and service of, 449.
interrogatories, of, leave for, how obtained, 481.
notice of the decree, of, 434; application for order for, how made, 434.
notice of motion, of, 1596; application for order for, how made, 1596.
notice of motion for decree, of, when ordered, 820.
petition, of, 1606, 1607; application for leave for, how made, 1607.
replication, of notice of filing, 881, 832.
revivor, of order for, 1509, 1510 in n.
sequestration against privileged persons, of order nisi for, 478, 474, 1066.
subpoena to show cause against decree, of, 171.
subpoena for costs, of, when directed, and how applied for, 1452.
subpoena to name new solicitor, of, 455.
summons, of, 1385, 1336.
supplemental bill, of, 448 n., 1510 in n.
traversing note, of, when permitted, 514.
summons, of, 1385, 1336.
additional accounts or inquiries, for, 1261.
amend bill, for leave to, 414.
to enlarge time for amending, or for obtaining order to amend, 421.
answer, to enlarge time for, 741.
compensation on sale, for allowance or payment of, 1282, 1283 and n.
costs of, allowance of, 1439.
delivery of abstract, for, 1216.
effected, how, 1335.
evidence, to enlarge time for taking, 890.
examination of witnesses for, 1386.
further consideration of summons suit, for, 1872.
guardian, for appointment of, 1353.
hours for effecting, 1385.
jurisdiction, out of, 449 n., 1385 n., 1336 and n.
length of time for, 1333.
examination of witnesses, when for, 1333.
further consideration of summons suit, when for, 1372.
originating summons, in case of, 1333.
shortened, when, 1383 n.
maintenance of infant, for, 1360.

[The references are to the star paging.]

SERVICE — continued.

- non-appearing defendant, on, 458, 1885.
- where decree made on default, 528.
- resale, for, 1282.
- sale by private contract, for confirmation of, 1298.
- substituted service of, 1386.
- substitution of purchaser, for, 1285.
- Sunday, *subpoena* returnable on, irregular, 448 n.
- supplemental bill, of, on solicitor in original suit, 454 n.
- take bill off file as being unauthorized, of notice of motion to, 308.
- transfer of cause, of notice of motion for, 398.
- traversing note, of copy of, how effected, 514, 515.
- effect of, 516.
- jurisdiction, out of, 515.
- order for, when necessary, 515; application for, how made, and evidence, 515.
- proof, at hearing, 516.
- substituted, 515.
- unsound mind, of bill on person of, 444.
- jurisdiction, out of, 452.
- notice of the decree, of, on, 484; effected, how, 484.
- application for direction as to, how made and evidence, 484.
- substituted, when directed, 444 n.
- warrant of Taxing Master, of, 1445.
- costs of, allowance of, 1439.

SET-OFF,

- costs of, 1409; right to, not lost by issue of attachment, 1455.
- in Equity, 1621 n.

SETTING DOWN,

- appeal motions, 1487, 1603.
- appeals and rehearings, 1483.
- House of Lords, in the, 1498.
- cause for hearing, 968—966.
- abatement after, entry of, 977.
- bill and answer, on, 966.
- compromise after setting down, entry of, 977.
- costs of, when cause struck out of paper, 975, 984.
- court, before what, 963 and n.
- defendant, at instance of, 964, 966.
- disclaimer, upon, 709.
- dismissal of bill after setting down cause may be pleaded, 669.
- effected, how, 965.
- enlargement of time for evidence, notwithstanding, 964.
- formal defendants, in case of, 431.
- pro *confesso*, when cause ordered to be taken, 518, 966.
- time for, 963—965.
- amendment of bill not requiring answer, after, 965 and n.
- answer not required, and none put in, where, 965.
- bill and answer, for hearing on, 964, 966.
- enlargement of time for evidence, after, 964.
- vacations, when reckoned in, 965 n., when not, 889, 965 n.
- where voluntary answer put in, 802.
- viva voce, when evidence to be taken, 911, 966.
- English rules concerning, not adopted in Massachusetts, and inapplicable in New Jersey, and Tennessee, 963 n.
- cross causes, in case of, 975, 1558.
- demurrer, 594.
- neglect, consequences of, 594; relief against, 594.
- order for, 594; service of order, 595.
- time for, 594; vacations not reckoned in 594.
- demurrer by witness, 944.
- demurrer and plea, 789.
- exceptions for insufficiency, 768.
- notice of, 768.
- time for, 767; enlarged or abridged, when, 767.
- election, in cases of, 767, 816.
- injunction cases, in, 767.
- vacations, when reckoned in, 768.
- exceptions for insufficiency to second or third answer, to, 770.

[The references are to the star paging.]

SETTING DOWN — *continued.*

 notice on, form of, 770; amendment of, 770.
 exceptions for scandal, 352; notice of, 853; time for, 852.
 further consideration, cause for hearing on, 1370–1372.
 chambers, cause originating at, in case of, 1372.
 court, in what, 1371.
 effected, how, 1371.
 notice of, service of, 1871, 1872.
 affidavit of service of, 1873.
 parties attending under orders or purchasers, to, 1372.
 persons holding stop orders, to, 1373.
 short cause, as, 1871; service of notice of, 1372.
 time for, 1371; where cause originated at chambers, 1372.
 further hearing, after trial of issue or question of fact, 1146, 1147.
 time for, 1147.
 injunction, motion for, turned into motion for decree, 825, 1600, 1671.
 motion for decree, how effected, 825; time for, 802, 824.
 petitions, 1608.
 plea, 692, 693; consequences of neglect, 695.
 former suit, on decree, of, 637, 661, 692.
 Judge, before what, 693.
 order for, how obtained, 693.
 outlawry, of, 692.
 service of order, 693.
 time for, 693; vacations and close days, not reckoned in, 696.
 when it expires on a close day, 696.
 pro confesso, cause ordered to be taken, 518, 966.
 record for trial of question of fact, 1083.
 supplemental cause, 1586.

SETTLED ACCOUNT. (*See STATED ACCOUNT.*)

SETTLED ESTATES ACT. (*See LEASES, AND SALE.*)

SETTLEMENT,

 affidavit of none, form of, and when required, 95.
 Master's office, of deeds at, 1261, 1262.
 (*See DEED.*)
 marriage, purchase for valuable consideration, 675; and so pleaded, 675.
 if postnuptial, antenuptial agreement must be shown, 675.
 rectification of, costs of suits for, 1438.
 suit to avoid, parties to, 284.

SETTLEMENT (EQUITY TO), 90–108.

 adultery of wife, effect of, on, 108.
 ward of court, married clandestinely, in case of, 108.
 amount settled, 102 and n., 2001 n.
 assignee of husband, attaches against, 104; except in case of life-estate, 104.
 assignment by husband of wife's equitable *chose in action*, not lost by, 121.
 attaches, when, 91, 2001 n.; when not, 92.
 children, is for benefit of, 106; does not survive to them, 106.
 unless contract or order for settlement in her lifetime, 106.
 co-plaintiff, not lost by joinder of husband as, 109.
 creditors at time of marriage, not valid against, 92 n.
 death of husband or wife before settlement approved, effect of, 107.
 desertion of husband, forfeited by groundless, 104.
 equitable interest of wife in real estate, attaches to, 91.
 foreign domicile, when it attaches in case of married woman having, 95.
 forfeited, how, 104.
 husband only having right to sue, does not attach in case of, 92.
 husband maintaining wife and children usually allowed whole income, 102.
 if he does not do so, whole or portion settled, 102.
 husband's trick, not defeated by, 103.
 joinder of husband in, as co-plaintiff in, not lost by, 109.
 life-estate of wife, attaches to, 92.
 misconduct of wife, when forfeited by, 104, 107.
 modern adoption, not of, 92.
 personal estate of wife, attaches to, 92.
 raised, how, 92; may be claimed at any time before actual payment out, 97.
 reversion or remainder of property, in release of, under statute, 98.
 settlement directed on refusal of consent to payment to husband, 100.

[The references are to the star paging.]

SETTLEMENT (EQUITY TO) — continued.

- form of, 108; nature of, 101.
- order itself, when made by, 101.
- settlement, previous, effect of, on, 105.
- survivorship, distinct from right by, 92.
- waived, how and when, 93-101, 106.
may be at any time before settlement finally ordered, 106.
(See EXAMINATION OF MARRIED WOMAN.)
- on what it depends, 2001 n.
- property to which it extends, 2001 n.
- terms and provisions of, 2001 n.

SETTLOR,

- should not be co-plaintiff with purchaser in suit to avoid settlement, 234.

SHAREHOLDER,

- joint-stock company, in, when one may sue on behalf of himself and the others, 23, 24, 288-245.

- when one may be sued on behalf of others, 272-276.

(See CLASS. JOINT-STOCK COMPANY.)

SHARES,

- description of, in decree or order, 1005, 1783, 1784.

- in unincorporated joint-stock company, assignor of shares in, when a necessary party, 199.

- in public company, charging order on, 1038-1042.

SHERIFF,

- amercement of, for not making return, 470.

- assistance, execution of writ of, by, 1063.

- attachment, delivery of, to, 469.

- bail, when and how put in to, 468.

- not obliged to take, 468.

(See BAIL. BAIL-BOND.)

- disturbance of possession of receiver by, proceedings in case of, 1744.

- duties of, in executing writs, 466, 469.

- usually performed by deputy or under-sheriff, 466.

- execution of writ of, by, and fees for, 1064.

- escape, liability for, 469 n., 1046.

- fieri facias, execution of writ of, by, and fees for, 1065.

- interpleader, by, 1566.

- ne exeat, execution of writ of, by, 1710, 1711.

- party, whether a necessary, 295 n.

- return of, 438, 469-471, 490; how compelled, 470.

- county palatine, when issued into, 470.

- name, made in sheriff's, 469.

- time for making, 468, 464, 469, 470.

- true, must be, 469.

SHERIFF'S (OFFICER),

- duty of, in executing warrant, 468.

- execution of warrant by, how effected, 468, 467.

- may be out of hundred, but not out of county, 467.

- return of warrant by, 467.

- warrant to execute writ made out to, 468; form of warrant, 468; return of, 467.

SHIP,

- account of profits made by, plea of pendency of former suit for, good, though not between the same parties, 635.

- crew, one of, may sue for self and others for prize-money, when, 239.

- improper employment of, restrained, 1653.

- indorsement of certificate of registry restrained, when, 1653.

- registers and certificates of register of, how far admissible without proof, 864.

- transfer of share in, injunction against, 1653.

SHIP-OWNER,

- affidavit accompanying bill not necessary, 393, 394.

SHORT CAUSE,

- cause, when fit to be heard as, 972 n.

- cause paper, put in, when, 972; motion for decree, in case of, 826.

- counsel's certificate for hearing as, 972.

- marking cause as, 972.

- further consideration, for hearing on, 1371.

- chambers, where originating at, 1372.

[The references are to the star paging.]

SHORT CAUSE — continued.

motion for decree heard as, 825.
service of, notice of marking as, 972 and n.
further consideration, for hearing on, 1371.
when cause originated in chambers, 1372.

SHORT-HAND WRITER,

notes of *ridere vocis* evidence, when taken by, 902 n.
costs of, 912 n., 1440 n.
how far privileged, 571 n.

SIGNATURE,

agent's, when, sufficient to bar statute of limitations, 647.
agreement relating to land, to allegation of, not necessary, 865.
answer, of counsel to, 732.
Attorney-General, of, to his answer, 139, 735.
Attorney-General, of, to information, and amended information, 399.
how obtained, 399.
petition under Sir S. Romilly's Act, to, 1855.
bill, of counsel to, 811
defendant, of, to answer, 732, 783.
addition of, by amendment, when permitted, 788.
attestation of, when answer put in without oath, 737.
commissioner, when answer taken by, 751.
place of, 746.
schedule to answer of, to, 733, 746.
defendant, of, to disclaimer, 708; attestation of, when put in without oath, 708.
defendant, to plea, 689.
attestation of, when put in without oath, 689.
not required, when oath unnecessary, 689.
when dispensed with, by order, 689.
defendant, of, to schedule, to answer, 733, 746.
deponent, of, to affidavit, 897.
examiner, of, to depositions, 905, 910, on refusal of witness, 910.
judge, of, to chief clerk's certificate, 1328.
to scheme for charity, 1857
judge of Superior Court, of, judicially noticed, 866.
Lord Chancellor, of, to docket for enrolment, 1028.
Master of the Rolls, of, to docket for enrolment, when required, 1028.
official administering oath of, to affidavit, 897.
to answer, 746; to schedule to answer, 746.
partition of, commissioners to certificate, of, 1159.
petitioners of, to petition under Sir Samuel Romilly's Act, 1855.
Secretary of State for India, of, to his answer, 735.
solicitor, of, to notices of motion, 1594.
pauper, to proceedings on behalf of, 41, 1594, 1604, 1605.
stated account, to, not necessary, 666.
witness of, to depositions, 904.

SIMONY,

demurrer, because discovery would expose defendant to penalty of, 563.

SLANDER,

discovery of libellous publication must be given for purposes of action for, 566.

SMOKE,

emission of, where restrained, 1635 n.
passage, of obstruction of, when restrained, 1635 n.

SOCIETY,

class suit on behalf of, when permitted, 238, 239.
description of, in decree or order, 1006, 1784.

SOLICITOR, 1840–1849

agent, when acting as, to write or print principal's name and place of business on
writs and summonses, and on proceedings left at Record and Writ Clerk's
office, 454.
amend bill or information, must join in affidavit for leave to, 415.
amended bill, service upon, of, 446, 461.
more than one copy served, when, 446 n.
appearing for infant, when liable for costs, 162 n.
arrest, privileged from, when, 1069.
Attorney-General, of, affidavit in support of application to amend, information
made by, 415.

GENERAL INDEX.

[The references are to the star paging.]

SOLICITOR — *continued.*

- authority of, what sufficient to defend, 532 ; to sue, 306, 307.
- bill for account does not lie in respect of bill of costs of, 1845.
- certificate of, to information, 399.
- abatement or compromise of cause, on, 977 ; fee for same, 977 n.
- lower scale of costs for, 1444.
- office copy of, 1445 ; left on bespeaking decree under, 1009.
- petition under Sir Samuel Romilly's Act, to, 1855.
- change, of, 1847-1849
 - order for, usually obtained as of course, 454, 1847 , when irregular, if so obtained, 454 n., 1847.
 - entry of, at Record and Writ Clerk's office, 454, 1848.
 - order for, when necessary, 454, 1847-1849.
 - agent, change of, in case of, 1847.
 - co-plaintiff, late an infant's, in case of, 79
 - new next friend of infant, on appointment of, 77.
 - new next friend of married woman, on appointment of, 111.
 - partnership, dissolution of, 1848.
 - person, where client wishes to prosecute suit in, 1848.
 - order for, when not necessary, 1848.
 - death of solicitor, on, 1848.
 - new plaintiff coming in by revivor or supplement, 1849.
 - partnership, solicitor entering into, 1848.
 - party acting in person appointing a solicitor, 1849.
 - prosecution, when suit not in, 1848.
 - service of order for, on parties, 1847
- chief or junior clerk, struck off roll on appointment as, 1326.
- clerk of, communication to, when privileged, 576.
- communication to or from, how far privileged, 571-580, 1833, 1835.
- concealment by, 1664 n. (a).
- corporation, of affidavit in support of application to amend bill made by, 415.
- costs, when made payable to, 1410.
- costs of, when charged on property under statute, 1846, 1848.
 - (See *COSTS.*)
- costs occasioned by employment of, a just allowance, when, 1234, 1235.
- costs, when ordered to pay, on ground of misconduct, 1840.
- delivery of bill of costs, 1841 , and see *infra*, " taxation of bill of costs."
- distinct, parties to be represented in chambers by, when, 1337.
- documents delivery up of, by, jurisdiction to order, 1841.
- documents in possession of, considered to be in party's own, 725, 1826, 1827.
- duties performed by, 1840.
- guardian *ad litem*, appointment of, as, on application of plaintiff, 162, 177, 475, 476; costs of, 162 n., 1457.
- hearing, penalty for non-attendance at, 826, 978, 1373.
- infant, of, how far his acts are binding, 73, 74, 168.
- infant, of, filing bill on behalf of, without next friend, liability for costs, 68.
 - when he may act for next friend and defendants, 75.
- interest, solicitor when allowed or charged with, 1381.
- interrogatories, service of, upon, 480.
- lien of, for costs, 1841-1846.
 - (See *LIEN, SOLICITOR'S.*)
- not barred by statute of limitations, 1846 n.
- married woman making motion on behalf without next friend, liable for costs, 110 n.
- misconduct of, punishment for, under summary jurisdiction, 1840.
- mortgagee, costs, 1285 n. (a), 1414 n. (a).
- name and address of, to be inserted at end of bill, 389.
- name, place of business, and address for service of, to be placed on writs and other proceedings left at Record and Writ Clerk's office, 397, 454.
- ne creak*, when granted against, 1705.
- new, *subpoena* to name, 455 ; substituted service of, 455, 456.
- next friend of infant, of, where he should not also act for defendants, 75.
- non-attendance of, at hearing, or omission to deliver papers for use of court, penalty for, 826.
- party to suit, when he may be made, 298 ; allegations of bill, 298.
- pauper, assignment of, to, 41 ; may not refuse to act, 41.
- bar, on defendant in contempt for not answering being brought to, 501.
- on report of solicitor of Suitors' Fund, 502 n. ; of keeper of prison or jailer, 503 n.

[The references are to the star paging.]

SOLICITOR — continued.

- payment of money by, form of order for, 1005.
- payment out of court of small sum, to, on undertaking to apply, 1800.
- person not a party, of, service of proceedings upon, 456, 1385, 1596, 1597.
- personal representative, when not allowed professional charges, 1284.
- prisoner for contempt, assignment of, to, 500, 501.
 - bar of the court, when brought to, for want of answer, 501.
 - on report of solicitor to Suitors' Fund, 501 and n., 502 and n.; of jailer, 502, 508 n.
- professional confidence, application of the rule as to, to, 578–579, 1833–1835.
 - crime or fraud, 578 n.
- (See PROFESSIONAL CONFIDENCE.)
- receiver, solicitor in cause not appointed, 1783.
- repayment of money by, power of court to order, 1841.
- retainer of, what is sufficient, 806, 807, 533.
- roll, power of court to strike off, 1840.
- sale under decree or orders, solicitor conducting, agent for all parties, 1267.
- sequestration for non-payment of costs against, 1453.
- service of proceedings on, how effected, 454, 884; forms for service, 455.
- service of proceedings on, how effected, 454, 1174; hours for service, 455.
- service on, of order for payment by his fine of money, what sufficient, 1590.
- signature of, to notices of motion, 1594.
 - proceedings on behalf of pauper, to, 41, 1594, 1604, 1605.
 - striking off the roll for misconduct, 1840.
- substituted service upon, of bill, 447, 448; of decree or order, 1044, 1045.
- summary jurisdiction over, 1840–1847.
 - cases in which put in force, 1841.
 - delivery up of documents, when ordered under, 1841.
 - only exercised for acts done as solicitor, 1841.
 - taxation of bill of costs under, 1841; after payment, 1843.
 - taxation of bill of costs of, 1841.
 - trustee not allowed professional charges, unless specially authorized, 1234, 1235.
 - other parties, when he acts for, 1413, 1414.
 - partner, of, right of to costs, 1414.
 - profit costs not allowed, 1234, 1235, 1413, 1414 n.; *secus*, where special authority, 1413, 1414.
 - town agent, of, right to costs, 1414 n.

SOLICITOR AND CLIENT,

- accounts between, opened, when, 667.
- communications between, how far privileged, 571–578.
- (See PROFESSIONAL CONFIDENCE.)
- taxation of costs as between, 1434, 1435–1438.

SOLICITOR-GENERAL,

- Crown, sues, on behalf of, when, 7.
- defendant, when made, 140.
- fiat* of, to petition under Sir Samuel Romilly's Act, 1855.

SOLICITOR (TO SUITORS' FUND),

- assignment of, to pauper prisoner, 502 n.
- costs of, when appointed guardian *ad litem*, 162 n., 1457.
 - (See Costs.)
 - guardian *ad litem*, for infant defendant, when appointed, 162, 475 n.
 - for defendant person of unsound mind, 176, 475 n.; when not, 476
 - poverty of defendant in custody, inquiry as to, conducted by, 501 n., 502.
 - visitation of prisoners by, 155, 502, 503.

SOLICITOR TO TREASURY,

- change of, suits continued by or against successor, 1512, 1513.

SOVEREIGN (FOREIGN). (See FOREIGN GOVERNMENT.)

SPEAKING DEMURRER,
definition of, 587.

(See DEMURRER.)

SPECIAL CASE,

- appropriate, when, 8.
- award, statement of, as, 1859.
- representative of the estate, when appointed for, 203.

[The references are to the star paging]

SPECIALTY,

creditor, personal representative necessary party to suit by, 282.
creditor by, no longer entitled to preference in administration, 238 n.
debt, what interest allowed on, 1524.
limitations, statute of (21 Jac. 1, c. 16), not applicable to actions on, 647.

SPECIFIC PERFORMANCE,

abandoned objections, inquiry as to, not added to decree for, 1261.
abroad, acts to be performed, 629 n.
account of what due for purchase-money, interest and costs in suit for, 1220.
advance of suit for, when directed, 972.
report in suit for, form of, 1217.
review of, 1218, 1219, 1320.
subsequent proceedings, 1220, 1449.
agreement to take lease, when license required, of, allegations of bill, 369.
arbitration, of agreement or covenant to refer to, not decreed, 670.
bill for, form, 368 n., 385 n., 545 n.
should not seek relief against persons interested in the property, 389.
compensation decreed with, where title cannot be perfected, 2259 n.
for beneficial and lasting improvements, bill retained as security, when
specific performance denied, 2278 n.
continuous acts, 1668.
costs in suits for, 990, 1398-1404, 1407.
(See Costs.)
cross-bill, when decreed without, 380 n., 885, 1551.
damages, assessment of, in cases of, 1080 and n., 1081, 1082 n.
special damage must be shown, 1082.
declaration of lien for unpaid purchase-money, in suit for, 1220 n.
decree in suit for, 989.
decree for, proceedings under, 1215-1221.
rectification of, 1029.
discharge of purchaser, in suit for, 1218.
discovery of purchaser's property, not compelled in suit for, 719.
dismissal of bill for, when without prejudice, 994, 995.
at further hearing after trial, 1148.
discretion, sound and reasonable, matter of, 1889 n.
double pleading, when allowed in suit for, 607.
election between suit and action, in cases of, 815 and note.
final order, when required in, 999.
frauds, statute of, plea of, in suit for, 655, 656.
answer in support and averments in plea, 656.
oral, at hearing, when allowed, 656, 657
further order in vendor's suit for, 1220; in purchaser's suit, 1221.
indemnity, contract of, 851 n. (a).
infant, not decreed at instance of, 231.
injunction in suits for, 1656, 1657, 1665; not granted when specific performance
would not be decreed, 1663 n., 1664.
to restrain alienation *pendente lite*, 1652.
to restrain collection of purchase-money, 1653 n.
inquiry as to abandoned objections not added to decree, 1261.
inquiry into management of property, not directed under prayer for general relief
in suit for, 381.
interlocutory injunction, not granted where it would not be decreed, 1681.
jurisdiction, of agreements to convey land out of, 1083 n.
lease, covenant to renew, 1658 n
lots, bill by purchasers of several, multifarious, 344.
ne exeat, when granted in, 1700.
not if applicant's equity doubtful, 1701.
or defendant has been held to bail for the same demand, 1701.
amount for which writ marked, 1709.
offer to perform contract, where necessary and effect of, 385.
one witness, decree for, when made on evidence of, 846, 847.
parol agreement, of, when decreed, 847.
parol variation, when decreed, in case of, 380 and note.
part performance, in case of, 847, 860 n. (b).
parties to suits for, 194, 196, 197, 220, 221, 230, 231, 279, 285, 295, 296, 297.
agent or auctioneer not necessary, 197, 295-297.
antecedent agreement, person claiming under, 230.
cestuis que trust, when necessary to suit by trustee, 220.
practice where they are numerous, 221.

[The references are to the star paging.]

SPECIFIC PERFORMANCE — *continued.*

- concurrence, persons whose, is required, 230, 231.
- contract, parties to, usually only necessary parties to suit, 280.
- covenants, in suit for the performance of, 194.
- death of purchaser, in case of, 285.
- interest under vendor, party who has acquired, 231.
- judgment creditors of purchaser not necessary to bill against him, 279.
- possession, where vendor has parted with the, 231.
- remainder-men not necessary, 264
- sub-contract, in cases of, 196, 278.
- uninterested person who has joined in contract not a necessary party, 247.
- prayer for general relief in bill for, 878 n.
- property of purchaser, discovery as to, when compellable in suit for, 719.
- receiver, when appointed in suit for, 1720, 1729.
- rents and profits, account of, not directed under prayer for, 380.
- rescission of contract, in suit for, 1220 n.
 - of contract to transfer shares in corporations, 1902 n.
- settlement of conveyance, in, 1219, 1220.
- staying proceedings pending appeal in suit for, 1468, 1470.
- supplemental answer, when not permitted in suit for, 781.
- time, when material, 869 n.
- title, inquiry as to, in suit for, 987-990, 1215-1221.
 - (See **TITLE.**)
- variance, effect of, in suit for, 860, 861.
- venue, 629 n.
- waiver of title, how stated in bill for, 821, 372.

SPEED CAUSE,

- undertaking to, 807.

SPLITTING CAUSES, 380 and n.

SPOLIATION,

- receiver, when appointed, in cases of, 1720, 1721.

STAKEHOLDER,

- interpleader by, 1565, 1566.

STAMP,

- agreement to waive, objection for want of, not given effect to, 849, 880.
- attorney, on power of, 1810 n.
- averment of, not necessary, 865.
- certified extract from register, on, 865 n.
- conveyances, on, 1841 n.
- insufficient on probate or administration, no decree till remedied, 819.
- new trial not granted, because stamp ruled by judge to be sufficient, 881.
- presumption, 881 n.
- objection for want of, taken by court, 880, 981; remedy for, 880.
- cause allowed to stand over to remedy defect, 981.
- recognizance, given as security for deposits on sale, on, 1272, 1273.

STAND FOR ANSWER,

- demurrer not ordered to, 600.
- plea, when ordered to, 700, 701.

(See **PLEA.**)

STANNARIES (COURT OF),

- appeals from, 1459 n.
- Court of, demurrer that it is proper tribunal, 554.
- Equity, a Court of, 544 n.

STATE,

- acts of, of British colony or foreign State, how proved, 863.
- when a necessary party, 133 n.

STATE OF FACTS,

- abolished, 1338.

STATED ACCOUNT,

- what is a, 655 and n.
- account in suit taken without reference to, unless so directed, 1252.
 - except in administration suit, 1252.
- acquiescence in, 666 n.
- attorney and client, between, opening, 667.
- bill to open, certainty required in statements of 371.
 - errors must be specified in, 371, 668.

[The references are to the star paging.]

STATED ACCOUNT — *continued.*

- but all need not be proved, 668.
- delivery of, mere, not sufficient, 668; rule among merchants, 668.
- discovery not barred by, in suit by third parties, 666.
- error in, 666 n., 667.
- "errors excepted" effect of, 668.
- final, must be, 665.
- fraud, charge of, in, effect of, 667 and n., 726 n.
- guardian and ward between, opening, 667.
- interest on balance of, allowance of, 1257.
- mistake, not opened for mere, 668.
- opening, error admitted and corrected before suit not a ground for, 668.
- plea of, 665-668, 726 n.
- answer in support of, 616, 667; when fraud or error charged, 667.
- suit to set it aside, in, 616.
- averments of, 618, 666, 667; when fraud or error charged, 667.
- form of, 668.

(See PLEA.)

- release not under seal, pleaded as, 666, 669.
- signature to, not necessary, 666.
- trustee and *cestui que trust*, between, opening, 667.
- writing, must be in, 665.

STATING PART OF BILL, 300-372.

STATUTE. (See ACT OF PARLIAMENT.)

STATUTORY JURISDICTION,

- applications under, how made, 3, 1851.
- costs, under, when taxed on lower scale, 1443.
- demurral on the ground of, 558.
- evidence on applications under, 1851.
- orders under, enforced as in suits, 1851.
- petitions under, title of, 1604.

STAYING PROCEEDINGS,

- administration suits, in case of concurrent, 635, 797-800.
- appeals, pending, 800, 1467-1471 and notes.
- account, taking of, not stayed, 1470.
- application for, how made, and to what judge, 1470.
- costs of, 1471.
- notice of, to Accountant-General, 1471, 1814.
- costs not taxed, where, 1467.
- decision of question, not ordered when it would be, 1469.
- discretionary with court, 1467 n., 1468 n.
- distribution of fund, in cases of, 1469.
- expense not directed on ground of, 1470.
- foreclosure, in cases of, 1470.
- further hearing after trial not stayed, 1147.
- injunction, in cases of, 1468; after dismissal of bill, 1468, 1469.
- irreparable mischief, danger of, 1468.
- loss of object of appeal, danger of, 1468.
- sale of property, in case of, 1468.
- specific performance in cases of, 1468, 1470.
- arbitration, after agreement to refer to, 670, 1861.
- application for, how and when made, 1862.
- bankruptcy of next friend of married woman, on, 112.
- bankruptcy of plaintiff after decree, on, 814.
- concurrent suits, in, 635, 797-800.

(See CONCURRENT SUITS, STAYING PROCEEDINGS IN.)

- consent, by, application for, how made, 796.
- contempt, till clearance of, 508.
- contempt for non-payment of costs, where plaintiff in, 797.
- costs, non payment of, in former suit or motion, for, 39, 40, 505 n., 796 n., 797 n., 1453 n.
- cross-suits in, 447, 1552.
- answer, until filing of, 1552.
- appearance, until entry of, 447.
- conduct of suit where leave to carry it on subsequently procured, 795.
- decree, after, 793; in class-suit, 795.

[The references are to the star paging.]

STAYING PROCEEDINGS — continued.

dismissal for non-prosecution, stay as to co-defendants, where not a, to motion for, 809, 810.
 election, pending inquiry, in cases of, 817.
 foreign court, after decree in, 800.
 infant's suits, in cases of, 70.
 infringement of patent, where oppressive number of bills filed, 339 n., 801.
 lunacy, pending inquiry as to, in case of plaintiff, 85.
 married woman, instituting proceedings, as *feme sole*, in case of, 113 n.
 new next friend to married woman, on neglect to appoint, 112.
 payment of costs of former suit for same matter, until, 796, 809, 810, 1457.
 amount of costs must be first ascertained, 797.
 not ordered where plaintiff sues by next friend, 811.
 payment of costs of abandoned proceedings for same object, until, 505, 796, 1263, 1380, 1602.
 prosecution of suit though stayed as to co-plaintiff, 801.
 receiver, *pendente lite*, in suit for, 810, 811.
 receivers' accounts, must be passed notwithstanding, 1754.
 re-hearing, pending, 800.
 security for costs, till giving of, by plaintiff or applicant out of the jurisdiction, 27, 36.
 misdescription of plaintiff, in case of, 358.
 next friend of married woman, by, 111.
 specific performance, in cases of, 1470.
 submission to plaintiff's demand, and to pay costs, on, 794.
 only by consent, if application by plaintiff, 795.
 vexatious suit, 354 n.; in case of new bill, being copy of a former bill, which had been dismissed by consent, 796.

STEWARD,

communication to, not privileged, 576.

STOCK,

bequest of, not noticed by Bank of England, 147, 148.
 description of, in decree or order, 1006, 1783.
 evidence of title to, 147.
 infant, in name of, maintenance out of, 1356.
 judgment, how charged on, 1088.
 (See CHARGING ORDER.)
 sale of, by court, how affected, 1811, 1812.
 (See SALE UNDER DECREE.)
 title to, company may file bill of interpleader if disputed, 147.
 transfer of, into court, how affected, 1787.
 (See TRANSFER INTO COURT.)
 transfer of, when restrained, 1652.
 transfer of, out of court, how affected, 1811, 1812.
 (See TRANSFER OUT OF COURT.)

STOCK (PUBLIC),

bequest of, not noticed by Bank of England, 147, 148.
 title to, bank may file bill of interpleader if disputed, 147.
 transfer of, authorized or restrained without bank being party to the suit, 147; evidence of title, 147.
 trust of, not noticed by bank, 147.

STOCKHOLDERS,

of a corporation may sue directors for misconduct, 26 n., 144 n.
 bill by one barring another stockholder's bill, 635 n.
 cannot sue alone to compel the execution of a trust by a person holding the common property to pay corporation debts, 242 n.
 discovery from, 146 n.
 multifariousness in bill by, 334 n.
 parties, 269 n., 407 n.

STOP ORDER, 1694-1697

Accountant-General, lodging order with, 1041. 1696.
 applicable to what funds, 1694.
 application, on whose granted, 1694; how made, 1040, 1694.
 charging order, in aid of, 1039; when added to, 1041.
 costs of, right of applicant to, 1696.
 documents deposited in court, on, 1697
 evidence in support of application for, 1041, 1695.

[The references are to the star paging.]

STOP ORDER — continued.

- fieri facias*, granted in favor of creditor, under writ of, 1694.
- fund must be actually in court, 1694.
- further consideration, notice to holder of, on setting cause down for, 1873.
- irregularity, discharge of, for, 1697.
- judgment creditor, when granted in favor of, 1039, 1694.
- left on bespeaking order dealing with fund, 1009, 1803.
- married woman's reversionary *chase in action*, form of, in case of, 1696.
- notice to applicant of dealing with fund, 1697.
- petition, title to be shown by, 1695.
- priority, acquired by, 1696.
- restraint effected by, 1697.
- rights of parties not decided by, 1696.
- service of, petition for, 1695.
- solicitor's lien, not affected by, 1696; in aid of, 1845.
- subsequent assignment of interest affected by, proceedings in case of, 1697.
- trustees' costs, when made subject to, 1696.

STRANGER,

- advances made by, to wife entitled to maintenance, repaid him, 103.
- scandal may be objected to by, 351.

STREAMS,

- diversion of, when restrained, 1639.
- obstruction of, when restrained, 1689.
- pollution of, when restrained, 1638.

STRIKING CAUSE OUT OF PAPER,

- costs, when cause set down again, 976, 984.
- directed, when, 976.
- effect of, 976.
- standing over for a year, in case of, 977.

STRIKING OUT NAME,

- defendant, of, by amendment, before appearance, 301, 403.
- after appearance, 301, 403.

(See AMENDMENT OF BILL.)

demurrer, after allowance of, 599.

- plaintiff, of, by amendment of bill, before appearance, 403.
- after appearance, 404, 405.

(See AMENDMENT OF BILL.)

in case of infants, 72, 418.

SUA SPONTE,

court may take the objection of multifariousness and dismiss bill, 346 n.

SUB-CONTRACTS,

- bill against several persons claiming under, not multifarious, 337.
- persons entitled under, when necessary party, 198, 278.

SUBMISSIONS,

- improper, infant not bound by, 74.
- insertion of, in decree or order, 1008.
- striking out of bill, 418.

SUBORNATION OF PERJURY,

demurrer, because discovery would subject defendant to charge of, 583.

SUBPOENA (WRIT OF),

generally, 907.

correction of mistake in, 907.

delay in taking out, 643 n.

indorsement on, 907.

issue of, 907.

names, number of, in, 907.

præcipe for, 907.

time for service of, 907.

ad testificandum, 906, 907.

calling witness on, 1097.

cross-examination, to compel attendance for, 890, 914.

examiner, to compel attendance before, 906.

exhibits, to prove, at hearing, 884, 885.

husband and wife counted as distinct persons in, 907.

jurisdiction, may be issued against person out of the, 907 n.

partition before commissioners of, 1158.

[The references are to the star paging.]

SUBPOENA (WRIT OF) — continued.
service of, 885, 907.

(See SERVICE.)

trial of question of fact, on, 1086.

viva voce, after order to take evidence, at hearing, 912, 918.

appear to and answer bill, *subpœna* to, abolished, in England, 356.
still in use in United States, 389, 439 n., 1887 notes.

may be omitted in New Hampshire, 389 n.

bill defective for want of prayer for, in New Jersey, 389 n.

what the *subpœna* should contain, 391 n., 439 n.

form of prayer for, 389, 390.

in case of corporations, 391 n.

(See PRAYER OF BILL.)

bill ought to be filed before or at time of issuing, 439 n.

how issued, 439 n.

service of, 439 n.

form of, 439 n.

cause against decree, to show, issue of, 171.

service of, 171; when substituted service of, 171.

(See SERVICE.)

time for, 172.

(See DAY TO SHOW CAUSE.)

costs, for, 1451-1453.

amendment of, 1451.

costs, when not recoverable by, 1455.

fees for, 1451 n.

husband and wife, issued against both, 1452.

names in, number of, 1451.

persons not parties, against, 1455.

præcipe for, 1451 n.

preparation and issue of, 1451.

service of, 1451-1453; substituted, when directed, 1452.

affidavit, of, 1453.

(See SERVICE.)

unnecessary, when, 1451.

where costs paid one defendant to be repaid by another, 1452.

duces tecum, 906, 907; demurrer not necessary on refusal to produce under, 943.

calling witness on, 909.

documents, description of, in, 907 n.

telegrams, 907 note.

examiner, to compel attendance before, 906, 907.

exhibits, to produce at hearing, 884, 885.

motion for decree, issue of, on, 824.

names, number of, in, 907.

service of, 885, 907.

(See SERVICE.)

trial of question of fact, on, 1086.

viva voce, after order to take evidence at hearing, 912.

will, to produce, 877 n.

judgment, to hear, 967-970.

advertisement of, 969.

affidavit of service, 970, 978.

bill and answer, when cause heard on, 967.

cross-causes, on, 975.

defendant, when cause set down by, 968.

errors in, how corrected, 869.

fee on, 967 n.

endorsement on, 968.

irregularity in, waiver of, by appearance, 969.

names, number of, in, 968.

husband and wife reckoned as one, 968.

necessary, when, 967.

note, registrar's, for, 967.

preparation and issue of, 967.

return of, time for, 968; extension of, 969.

service of, 968.

(See SERVICE.)

time for suing out, 967.

new solicitor, to name, 455; substituted service of, 455.

[The references are to the star paging.]

SUB-PURCHASER,

bill against, when not multifarious, 337.
when necessary party, 196, 197, 275.

SUBSEQUENT FACTS,

dismissal of bill without costs on plaintiff's application, in consequence of, 791.
statement of, by supplemental answer, when permitted, 780.
statement of, by amendment of bill, 408.

SUBSTANCE OF BILL,
demurrer to, 556-561.

SUBSTITUTED SERVICE. (See SERVICE.)

SUCCESSION DUTY,

amount of, how ascertained, 1805.
costs, in cases relating to, 12 n.
order for payment of form of, 1804, 1805.
papers left on bespeaking orders for payment of, 1009.
payment of, evidence of, 1805.
proceedings when fund improperly paid out without provision for, 1805.
provision to be made for, in administration suits, 1007, 1803.

SUE (RIGHT TO),

persons having co-existent with plaintiff, necessary parties, whether right at law,
192; or in equity, 207.
or for the whole or part of the subject-matter, 208.

SUFFICIENT,

answer deemed to be, until found insufficient, 413, 786.
answer, from what period, if not excepted to, 786.
if excepted to, 786; unsuccessfully, 769.
vacations not included in computation of, 686.
demurrer not set down, when held to be, 594.
further answer, when deemed to be, 770.
moving on admission in answer, not an admission that answer is, 762, 1821.
plea not set down, when held to be, 695.
production of documents, application for, not an admission that answer is, 821.
supplemental answer, when deemed to be, 784.
voluntary answer, when deemed to be, 412.

SUGGESTION,

trial of question of fact, not unless supported by evidence, a ground for, 1077.

SUIT IN CHANCERY,

effect of institution of, on powers of trustees, 1342.
how commenced, 1, 2.
trustee, by or against, leave to bring or defend, when necessary, how obtained, 1343.
who may institute, 5.

SUITOR,

arrest, when protected from, 1069.

SUITORS' FUND,

contempt, payment of costs, out of, 502.
reimbursement thereof, 502.

(See SOLICITOR TO SUITORS' FUND.)

SUMMING UP,

defendant's evidence on trial of question of fact, 1108.
judge, by, when trial by jury, 1107.
plaintiff's evidence on trial of question of fact, 1106.

SUMMONS,

abandoned, costs of, 1338.
address of applicant, statement of, when unnecessary, 1338.
adjournment of, further summons not issued in case of, 1336.
affidavits on, 1338; notice of reading, 899; time for filing, 898.
alterations in, authentication of, 1332.
amendment of, 1334, 1335.

(See AMENDMENT OF SUMMONS.)

appearance to, when necessary, and entry of, 1335; fees on, 1335 n.

attendance at return of, 1336; at adjournment of, 1336.

authority, issued without, proceedings in case of, 1337.

commissioner to take examination of married woman, for appointment of, 94.

copies for service of, 1335; of originating summons, 1332.

different kinds of, 1331 n.

duplicate, when to be filed, 1332.

[The references are to the star paging.]

SUMMONS — continued.

- enlargement of, return of, 1384; originating summons in case of, 1388.
examination of witness, for, 1326.
new summons, when required in consequence of adjournment, 1336.
fees on issuing, 1392 n.
file, taking off, originating, application for, 1388.
filing duplicate of, 1882.
foot-note to, 1382.
formal parts of, 1331.
guardian of infant, for appointment of, 1348.
injunction to restrain creditor's action, for, 1617 n.
issue of, 1326.
maintenance of infant, for, 2, 1360.
name of applicant, statement of, in, 1882.
name, place of business, and address for service (if any) of solicitor to be written or printed upon, 454, 1331, 1832.
and in agency cases, principal solicitors also, 454, 1332.
next friend, statement of name and address of, in, 1332, 1333.
parties, general rules as to, on, 1382.
payment out of court, application for, when made by, 1328, 1324, 1588, 1796.
preparation and issue of, 1832
proceed on decree or order, to, in case of non-appearance or decree taken *pro confesso*, 528.
proceedings by, general course of, 1831-1337.
return of, 1388.
enlargement of time to answer, when for, 740, 741, 742.
further consideration of summons suit, in case of, 1372.
originating summons, in case of, 1333.
service of, 455, 456, 1335, 1336, 1372.
jurisdiction, out of, when leave given for, 449 n., 1336.
length of time for, 1338, 1372.
substituted, when, 1336.

(See SERVICE.)

SUMS,

- expression of, in affidavits, 895.
in answers, 743.
in bills, 896.
in interrogatories, 482 n.

SUNDAY,

- arrest on, void, 467
unless on Lord Chancellor's warrant, 467.
or order for committal, 467
or a recapture, 467
bill, service of copy of, on, invalid, 443.
time, when not reckoned in computation of, 354.
for service of notice of motion, in time, 1596; of petition, 1606.

SUPERIOR COURTS AT WESTMINSTER,

- office copy of record in, provable as exhibit at hearing, 882.
proceedings in, course of, judicially noticed, 546.
signature of judge of, judicially noticed, 866.

SUPPLEMENT (See REVIVOR.)

SUPPLEMENTAL ANSWER, 779-784.

- admission of documents not permitted in order to qualify, 781.
amendment of answer, supplemental answer filed instead of, 780.
application for leave to file, how made, 781.
case for, must be shown, 781.
confined to object intended, must be, 782.
evidence in support of application, 781.
exceptions for insufficiency, do not lie to, without leave, 784.
ignorance, when permitted in cases of, 780.
limitations (statute of), not permitted in order to raise, 781.
mistake as to facts, when permitted in case of, 780, 782.
omission, when permitted in cases of, 780.
permission for, granted cautiously, 782; when granted and refused, 780, 781.
position, not permitted where plaintiff cannot be replaced in his original, 782.
subsequent facts, when permitted in order to put in issue, 780.
sufficient, period at which it is, 784.
time for making application for leave to file, 782.

[The references are to the star paging.]

SUPPLEMENTAL BILL,

adjournment of hearing, on account of filing of, 976.
when proper, 1515 and n.

where an event happens subsequently to filing original bill, giving new interest or right, 1515 n.

not to maintain a suit on a cause arising after original bill was filed, 1515 n.

not to support a bad title, by introducing another arising after original bill, 1515 n.

not to contradict statements of original bill, 1515 n.

where party acquires a new right by purchase during litigation, 1516 n.

where plaintiff has assigned and obtained a re-assignment, 1516 n.
change of interest, 1515, 1516.

new interest arising to wife on death of her husband, 1516.

sole plaintiff making partial alienation, 1516.

one of several plaintiffs entirely deprived of his rights, 1516.
bankruptcy and insolvency, 1516.

lunacy, 1517.

assignment *pendente lite*, 1516 n., 1517.

of an equitable interest, 1517.

where the assignee makes himself party to the suit, 1517.

where interest of plaintiff suing in *autre droit* determines, 1517

death of plaintiff assignee of bankrupt or insolvent, 1518.

not sufficient where interest of sole plaintiff suing in his own right determines, 1518.

where original bill in nature of, necessary, 1518, 1521.

distinction in effect between, and original bill in the nature of, 1518.

where simple bill of, sufficient, 1519.

where tenant in tail succeeds former tenant in tail, 1519.

though coming in by new limitation, 1519.

where rule does not apply, 1519, 1520.

where rule does apply, 1520, 1521.

alienation by deed, 1521 and n.

new party comes before court in same plight and condition as former party, 1522 and n.

determination of interest of party suing in *autre droit*, 1517, 1522.

death of defendant before appearance, original bill, 1522

no cause in court against defendant until he appears, 1522.

revivor against executors, where no service on testator, in Massachusetts, 1522 n.

defendant becoming bankrupt after decree, 1522.

creditor's suit, where creditor, who files bill, dies, 1522.

notice to representative of former creditor, 1523.

whether notice of motion must be served on defendant also, 1523.

facts and circumstances occurring after the filing of the bill introduced by way of amendment, 406 and n., 407 and n., 1529.

defendant, may be brought on behalf of, 1530 n.

what may be introduced into, 1530 n.

whether leave to file must be obtained, 1523 and n., 1530 n.

how application for leave made, 1523 n.

what must appear as ground for filing, 1523 n., 1530 n.

form of, 1531 and n., 1532.

what it must state or recite, 1531 n., 1532 and n.

parties to, 1532, 1533.

when may be filed, 1533 n.

new case, 1517 n. (a), 2048 n.

new parties brought in by, subject to costs from commencement, 1534.

costs, where new parties resist plaintiff's demand, 1534.

proceedings upon, 1534.

demurrs to, 1534.

pleas to, 1535.

practice in regard to pleas and demurrs to, 1534, 1535 and notes.

answers to, 1523 n., 1535.

replication, 1535.

evidence, 1535.

motion for decree, 1535.

defendant generally called to answer supplemental matter only, 1534 n.

in what cases new witnesses may be examined, 1535.

mere continuation of original suit, and addition to original bill, 1535, 1536 and n.

depositions taken in original suit, 1535.

where there has been no decree in original suit, 1536.

where there has been a decree, 1536.

[The references are to the star paging.]

SUPPLEMENTAL BILL — continued.

- must not introduce new case or vary principle of decree, 1536 n.
- if it makes new case, or is inconsistent with or impeaches the decree, it becomes a bill of review, or in the nature of a bill of review, 1536 n.
- a teste of this, 1536 n.
- taken off file, when, 1536 n.
- dismissed at hearing, if improperly or unnecessarily filed, 1536 n.
- may be filed either before or after decree, 1536 n.
- in the nature of a bill of review requires leave of court, 1537 and n.
- bad title cannot be supported by, 1515 n.
- may be filed pending an appeal, to carry decree into execution, 1467.
- defendant in interpleader suit may file, to bring in new party, &c., 1571.
- parties added by, 294 and n.
- filings of traversing note to, 514.
- time for filing, 1530 n.
- copy of the bill, service of, under general order, 428, 429.
- inchoate title to support, 1515 n.
- irregularity in, remedy for, 1536, 1537.
- leave to file, when required, 1517 n., 1528.
- lunacy of plaintiff, necessary under former practice in case of, 84, 85.

SUPPLEMENTAL BILL IN THE NATURE OF A BILL OF REVIEW.

(See REVIEW, SUPPLEMENTAL BILL IN THE NATURE OF BILL OF.)

SUPPLEMENTAL CAUSE,

- advance of, 975.
- service in, upon solicitor in original suit, 454 n.
- setting down, 1536.

SUPPLEMENTAL ORDER,

- abatement, or defect in suit, instances in which made on, 1524, 1525.
- appearance, entry of, to, 538, 539.
- application, made on whose, 1525, 1526.
- assignee *pendente lite* brought before the court by, 281 and notes, 1525.
- bankruptcy of defendant, on, 159, 1524, 1525.
- co-executor, against, 1526.
- consistent, must be with original decree, 1080 n.
- discharge of protection order, on, 1526.
- inspectorship deed, on execution of, 1526.
- intermediate remainder-man coming into being *pendente lite*, added by, 266.
- lunacy of defendant, on, 1525; of plaintiff, 85, 1525.
- new committee of lunatic, on appointment of, when plaintiff, 85; when defendant, 176.
- notice of the decree, when not necessary against person served with, 1517 n.
- parties added by, 294.
- personal representatives of accounting party, form of, against, 1526.
- public officer, on death, on charge of, 1512, 1513.
- solicitor to treasury, on charge or death of, 1512, 1513.
- tenant in tail, on death or cesser of interest of, 229, 266, 1520 n.

SUPPLEMENTAL STATEMENT, 1529, 1530.

- abatement, not remediable by, 1509 n.
- answer to, 1523 n., 1530.
- appearance, entry of, to, 538.
- applicable, when, 1530, 1531; not after decree, 1530.
- defendant, cannot be filed by, 1530.
- facts occurring since filing of bill, when introduced by, 406.
- order, court may make respecting, 1530.
- parties not added by, 294 n., 1530, 1531.
- plaintiff not ordered to file, 1530.
- replication to, 834.
- service of, on formal defendant, 429.

SUPPRESSION OF DEPOSITIONS, 950, 951.

- upon what grounds depositions will be suppressed, 950.
- general interrogatory not answered, 951 n.
- in what cases prior to hearing, 951 n.
- witnesses re-examined, 951 n.
- taken before persons not named in commission, 951 n.
- failure to answer proper interrogations, 951 n.
- deposition in handwriting of attorney, 951 n.

[The references are to the star paging.])

SUPPRESSION OF DEPOSITIONS — continued.

- taken without notice, 951 n.
- without order where order required, 951 n.
- relating to a fact not in issue, 951 n.
- matter of discretion, 951 n.
- when, 951 n.
- leading interrogatories, 951.
- motion for, 951.

SURCHARGING AND FALSIFYING,

- accounts, in taking, what is, 668 and n.
- errors in law may be shown, under leave for, 668.
- leave given for, when, 668, 1252, 1258; is mutual, 668; how effected, 1252, 1258.

SURETY,

- creditor, not a, 269 n.
- necessary party to suit for contribution, unless insolvent, 270.
- but plaintiff may then elect to make him a party, 271.
- not necessary party to suit against principal, 269, 270.
- unless he has paid part of the debt, 270.
- or he has charged his estate as a collateral security, 269.
- ne *extat*, at instance of, 1705.
- ne *extat*, on writ of, discharge of, 1712–1714.
- receiver, of, liabilities and rights of, 1766–1768.

(See RECEIVER.)

SURPLUS,

- bankrupt cannot sue assignees for, 60.
- incumbrancers not necessary parties to suit for execution of trusts of, 257, 258.

SURPLUSAGE,

- plea not vitiated by mere, 610.
- struck out, when, because defence rendered inconsistent thereby, 718.

SURPRISE,

- amendment of answer, in cases of, 778.
- decree or judgment of another court, impeachment of, for, 664.
- enrolment of decree or order, when vacated for, 1026, 1027.
- new trial at law on ground of, 1138.
- when caused by fraud of opposite party, 1133.
- new trial of issue on ground of, 1122.
- case to be made on application, 1122.

SURVIVORSHIP (MARRIED WOMAN'S RIGHT BY),

- bar of, after husband may continue joint suit without administering to wife, 114.
- chattels real, in, 123–128.
 - how barred, 123, 125, 126, 127.
 - agreement to assign, by, 126.
 - assignment by husband, by, 123, 125.
 - of wife's judgment, 124, 125.
 - of land held by wife under decree until payment, 125.
 - of wife's mortgage for years, 125.
 - of wife's term upon condition and entry for breach which cannot take place, in his life, 126.
 - under-lease by husband of wife's term *pro tanto*, by, 126.
- not barred, when, 124–127.
 - assignment by husband, by, 124–128.
 - interest of wife incapable of vesting during coverture, of, 127.
 - mortgage in fee of wife, of, unless debt reduced into possession, 124.
 - satisfied term created in trust for wife out of her inheritance, of, 125.
 - term of wife upon condition and entry for breach which can take place in his life, of, 126.
 - trust term of wife, created with his consent, of, 125.
- bankruptcy, of husband, in case of wife's mortgage in fee, unless debt reduced into possession, 125.
- rules as to the same whether chattel legal or equitable, 124.
- assignment for or without value, whether, 127.
- term in trust for wife, and term in trust to raise money for her, in case of, 124.
- trust of wife's term, and term itself, in case of, 124.
- chooses in action, in, 115–123.
- how barred, 115–123.

(See REDUCTION INTO POSSESSION.)

[The references are to the star paging.]

SURVIVORSHIP (MARRIED WOMAN'S RIGHT BY) — continued.
 rules the same whether *cause in action* legal or equitable, 120.
 assigned for or without value, or by act of law, whether, 120, 121.
 reducible into possession or not, whether, 120, 121.
 death of either party before approval of settlement and without children, unaffected
 by, 107.
 equity to settlement, distinct from, 92.

TACKING,
 principles with respect to, 218, 380, 381

TAIL (TENANT IN),
 bill by, and his children, to perpetuate testimony to his marriage, does not lie, 816.
 defendant, death or cesser of interest of, proceedings on, 229, 266, 1520 n.
 death of plaintiff without issue, effect of, 266.
 eldest son of, bill by, to perpetuate testimony as to his father's marriage, does not
 lie, 816, 817.
 first, necessary party to redemption suit, where property settled by mortgagee, 259,
 260.
 incumbancers upon estate of, when necessary parties, 228.
 married woman, payment out of fund of, 99.
 payment out to, without disentailing deed, 99 n., 1802.
 plaintiff, death of, effect of and proceedings on, 229, 266, 1520 n.
 persons entitled after first, not necessary parties, 265.
 unless nature of estate doubtful, 265; or tenant a lunatic, 265.

TAIL AFTER POSSIBILITY (TENANT IN),
 equitable waste, restrained from committal of, 1634.

TAXATION, 1434-1450.
 another court, when bill includes business done in, 1446.
 appeals to House of Lords, of, 1504.
 appointment to tax, 1445; proceedings at, 1446, 1447.
 apportionment of costs, in case of direction for, 1449.
 balance, where costs to be retained out of, 1448.
 bill of costs for, 1444.
 (See Costs.)

carrying in bill of costs for, 1444.
 certificate of, 1446-1450.
 (See CERTIFICATE, TAXING MASTER'S.)
 chambers, transmission and certificate of proceedings in, 1443
 common law Master, at request of, 1446 n.
 completion of, 1447.
 contemnor may proceed with, 506.
 death of co-defendant, payee of costs, revivor when necessary, on, 1829.
 delay in proceeding with, remedy for, 1448.
 direction for, in case parties differ, proceedings under, 1441.
 fees on, 1447 n.
 injunction, 1661 n.
 method of, 1441-1450.
 necessity of business, Taxing Master bound to inquire into, 1449.
 objections to, how carried in, 1440.
 order for joint and several, 1448.
 parties differ, proceedings where reference is only in case, 1447.
 party and party, as between, what included in, 1434, 1439.
 costs taxed as, unless otherwise directed, 1410, 1435.
 trustees' costs, when taxed as between, 1435.
 principles of, 1434-1440.
 once adopted, followed on subsequent taxations, 1435.
 propriety of charge, Taxing Master's opinion as to, final, 1447.
 reconsideration of, 1450.
 reference, without formal, 812, 1442, 1601
 review of, 1449, 1450.
 summons for, 1450; evidence, hearing, and order thereon, 1450.
 warrant for, 1449.
 scales of, 1443.
 higher, when applicable, 1443.
 lower scale, certificate of, filing of, 1444; office copy of, 1444.
 wrong scale, costs when fees paid according to, 1444 and n.

[The references are to the star paging.]

TAXATION — continued.

- solicitor's bill of costs, of, under summary jurisdiction, 1841.
- solicitor and client, as between, 1434, 1435–1438.
- administration suit by heir, of heir's costs in, 1487.
- administrator of property of convict, of, 56 n.
- arbitrator's power to award, 1861.
- Attorney-General, of costs of, in charity cases, 1436.
- bill taken off the file, as filed without authority, in case of, 307–309.
- charity cases, in, 1436.
- creditor's suit, of plaintiff in, 1487.
- defendant in charity cases, 12, 1436.
- general fund, when costs paid out of, or fund of party, 1434, 1438.
- guardian of, 1360.
- heir of costs of, in charity cases, 1436.
- legatee's suit, in, 1487.
- next friend, of, 82.
- next of kin, of costs of, in charity cases, 1436.
- personal representatives and trustees, costs of, when taxed as between, 1435.
- relators of, in charity cases, 15, 1436, 1437.
- residuary legatee's suit, in, 1487.
- scandal, in cases of, 355 n.
- subsequent costs, of, included under direction for, unless specially excluded, 1363, 1876, 1448.

TAXING MASTER,

- accounts, what may be taken by, 1442.
- assistant to each other, 1441.
- certificate of, 1547–1550, 1504.
(See CERTIFICATE, TAXING MASTER'S.)
- chambers, transmission and certificate of proceedings at, to, 1442, 1443.
- clerks to, 1441 n.; salaries and pensions of, 1441 n.
- creditor, taxation of costs of by, 1442.
- duties and powers of, 1441.
- meaning of, in decree or order, 1008, 1442.
- necessity of business, bound to inquire into, 1449.
- number of, 1441 n.
- pensions and salary of, 1441 n.
- proprietary of charge, opinion of, as to final, 1449.
- reference to, how made, 1441, 1442; formal, when not required, 812, 1442, 1601.
- rotation, reference to, how obtained, 1445.

TECHNICAL EXPRESSIONS,
 how far to be used in bill, 362.

TELEGRAMS,

- subpæna duces tecum* for, 907 n.
- copy of, 879 n.

TENANCIES,

- creation or determination of, by receiver, when permitted, 1749.

TENANTS,

- cultivation by, in breach of covenant, restrained, 1655; distinction between express and implied covenants, 1656.
- custom of the country, contrary to, restrained, 1655.
- interpleader, bill by, 1564, 1565.
- manor, of, some only need be parties to suit, as to right of common, 276.
- parties, necessary to suit to restrain ejectment against them, 209.
- parties, not necessary to suits to settle boundaries, 262.
 or generally for land, 263.
- terre, all, necessary parties to suit affecting rent-charge, 276.
 except in case of charities, 276.
- waste by, restrained, when, 1629 and notes.

TENANTS IN COMMON,

- lessees of, when necessary parties, 208.
- limitations, statute of, when applicable as between, 644.
- mortgage, of, when necessary parties, 211, 212.
- parties, when necessary, 208, 209, 259 n.
- receiver, when appointed between, 1726.
- waste by, restrained, when, 1630.

[The references are to the star paging.]

TENDER,

amount due, and costs, of, effect of, 1394-1396.
costs of contempt, of, 507, 508.
mortgage, of amount due on, effect of, on mortgagee's right to costs, 1391.

TERM FEE,

allowed, when, 1440 n.

TERM OF YEARS,

husband's interest in wife's, 123, 124, 125; in her trust of a term, 124.
sequestrators cannot sell, 1054.

TERMS (OUTSTANDING). (See OUTSTANDING TERMS.)**TESTAMENTARY GUARDIAN. (See GUARDIAN OF INFANT.)**

how appointed, 1850 and n., 1351, 1352.

infant father, 1351 n.

age to which this guardianship continues, 1351 n., 1352 n.

marriage of female ward, 1351 and n.

rule as to, in Massachusetts, 1351 and n.

control of court, over, 1352 and n.

court may remove for cause, 1352 and n.

power of, 1351.

TESTIMONY (SUIT TO PERPETUATE). (See PERPETUATE TESTIMONY, SUIT TO.)**THELLUSSON ACT,**

costs where bequest declared void under, 1430.

TIMBER,

felled, removal of, when restrained, 1653.

felling, commission of waste by, when restrained, 1630.

forfeiture for felling, whether relieved against, 1658.

ornamental, cutting down by tenant for life, restrained, 1633.

sale of, proceedings on, 1272, 1273.

TIME,

account, for bringing in, how fixed, 1170 n.

adding to decree, for, 436.

affidavit, for furnishing copy of, 900.

as to documents, for making, extension of, 1822.

ex parte, on, application for injunction, or *ne exeat*, 900, 1670, 1709.

filed before issue joined, for giving notice to use, 889.

enlargement thereof, 890.

affidavits to be used in interlocutory application, for filing, 899, 1598.

amendment of bill, for by order of course, after answer, 412; by special order, 415

addition of parties, not increased by, 415.

demurrer, after, 411, 504.

demurrer and plea, after, 789.

enlargement of, how obtained, 421.

plea, after, 411, 692.

amendment of bill, for making, after order obtained, 420.

enlargement of, how obtained, 421, vacations not computed in, 421.

answer, for filing, where interrogatories, 488, 738; where no interrogatories, 739.

amended bill, to, where interrogatories filed, 738, 777; where not filed, 740, 777.

amendments and exceptions together, to, 788, 769, 775.

amendment of interrogatories, after, 486.

demurrer overruled, after, 601.

discharge of defendant not duly brought to the bar, after, 490, 491, 740.

contempt, when defendant in, for insufficiency, 775.

cross-causes, in, 1551, 1552.

enlargement of, 488, 740, 741, 777.

demurrer overruled, after, 601.

irregular, after attachment issued, 489.

submission to exceptions, after, 766, 769, 770, 775.

exception for insufficiency, after allowance of, 769, 775.

exceptions, not set down, after submission to, 766, 775.

set down, after submission to, 769, 775.

first or second answer held insufficient, after, 739, 769, 775, 776.

husband and wife, for joint answer of, 498

interrogatories served with bill, when, 479 n.

interrogatories, after amendment of, 486, 487.

jurisdiction, when bill served out of, 441, 453.

married woman, for separate answer of, 183, 740, 754.

[The references are to the star paging.]

TIME — *continued.*

- notice of filing, for giving, 755.
official printed copy, for delivery of, 757.
printed answer, for filing, 756.
pro confesso, for leave to file, when decree not absolute, 527.
security for costs pending order for, 83, 488, 740.
sufficient, when to be deemed, 786.
voluntary answer, in case, 740–742.
supplemental answer, for, application for leave to file, 782.
answer, voluntary, for, 739; to amended bill, 788, 789, 777.
enlargement of, 740–742.
to amended bill, 777.
pending motion for decree, 819.
appeal and rehearing in Chancery, for, 1476.
appeal motions, for setting down, 1487, 1603.
enlarged, when, 1476; application for enlargement, how made, 1476.
appeals to House of Lords, for, 1492.
answer to, enlargement of, how obtained, 1495.
answer for peremptory order to, when obtained, 1495.
determination of session of Parliament, in case of, 1496.
cross-appeal, for, 1496.
lodging cases, for, 1500; enlargement of, how obtained, 1500.
presentation of petition, for, 1494.
appearance, for, 442, 537.
custody, defendant in, for want of, when entitled to his discharge, 472.
formal defendant, in case of, 482.
jurisdiction, where defendant out of the, 441, 453.
notice of entry of, for giving, 537.
award, for making, under Common Law Procedure Act, 1854, 1860
bar, of the court, for bringing up defendant to, when messenger sent, 490.
when sergeant sent, 494.
habeas corpus, by, 490–492.
returned, attached and imprisoned, after, 490, 491; vacations reckoned in, 491 n.
return, *cepi corpus*, after, 490.
bill, for service of, on formal defendant, 429.
enlargement of, how obtained, 429.
bill, for filing, printed, 396.
caveat against enrolment, for prosecution of, 1025.
certainty required in allegations of, 369.
commission to take answer, for return of, 749.
for notice of execution of, 751.
computation of, general rules as to, 353, 354.
close day, in case of expiration on, 354.
close days not reckoned in, when, 354.
hours, when not limited by, 353.
copies made by solicitors, for delivery of, 900.
cross-examination, for, 918; motion for decree, in case of, 824.
cross-examination, for notice to produce witness for, 828.
enlargement of, how obtained, 914.
notice of to other parties, for giving, 915.
decree or order for bespeaking, 1009.
for service of appointment to pass, 1014.
decree or order, for obeying, statement of therein, 1005, 1039, 1043.
enlargement of, 1044, 1045.
demurrer, for, 591.
amended bill, to, when answer not required, 592.
extension of, 592.
notice of filing, for giving, 598.
vacation, runs in, 591
demurrer for setting down, 594.
vacations, time of, not reckoned in, 594.
demurrer and answer, for, 592.
dismissal for want of prosecution, for motion for, 801–804.
amendment of bill and further answer required, after, 808.
amendment of bill and further answer not required, after, 802.
answer not required and none put in, 803; vacations reckoned in, 803.
answer, after sufficient, 801.
evidence, after closing of, 801.
motion for decree, after service of, 802.

[The references are to the star paging.]

TIME — continued.

- plea, after undertaking to reply to, 696, 801.
traversing note, after filing of, 801.
vacation, when not reckoned in, 802.
voluntary answer, after, 803.
election, for obtaining order for, 816.
 amended bill, in case of, 816.
 answer, when none required, 816; where excepted to, 816.
 extension of time to make, how procured, 817.
enrolment of decree or order for, 1018, 1019.
 enlargement of, 1020, 1021; time for making application for, 1020.
 entry of *caveat* against, for, 1025.
entry of decree or order, for, 1016.
evidence, for closing of, when issue joined, 829.
 enlargement of, how obtained, 890, 1323; production of order, 889 n.
 costs of application, 890.
 cross-causes, in case of, 976, 1552.
 extension of, on expiration in long vacation, 889.
 printing, for, 902.
ex parte examination, for giving notice of, 901.
examination *de bene esse*, 985; for giving notice of, 938.
examination of witness, for giving notice of, to other parties, 915.
examination on interrogatories, for putting in, 926.
exceptions for insufficiency, for filing, 765, 766; extension of, how procured, 766.
 demurrer, to answer accompanying, 590, 600, 601, 765.
 demurrer and plea, after, 789.
 notice of filing, for giving, 765.
 plea, to answer accompanying, 691, 760, 761, 766.
 plea ordered to stand for answer, in case of, 701, 766.
 submission to, for, 766.
 vacations not reckoned in, 766.
exceptions for insufficiency, for setting down, 768, 769.
election, in cases of, 767.
enlarged or abridged, when, 767.
further answer, where, to, 770.
injunction cases, in, 767.
notice of, for giving, 767.
vacations, when reckoned in, 768.
exceptions for insufficiency, for submission to, 766; extension of, 766 n.
exceptions for scandal, for setting down, 352; for giving notice of, 358.
further consideration, for setting down cause on, 1371.
 cause originating at chambers, in case of, 1372.
further hearing after trial, for setting down cause for, 1147.
guardian *ad litem*, for service of application to appoint, 162, 177, 475.
inquisition on writ of inquiry, for application to set aside, 1141.
interrogatories, for filing, 480; extension of, how obtained, 481.
 costs of application, 481.
interrogatories, for service of, 480; extension of, how obtained, 481
 costs of application, 481.
jurisdiction, out of the, 453, 481.
interrogatories for examination of plaintiff, for filing, 1555.
measurement of, judicially noticed, 546.
minutes, for service of appointment to settle, 1012.
 for motion to vary, 1014.
motion for decree, for giving notice of, 819.
 extension of, 819; when time to answer enlarged, 819.
motion for decree for filing affidavits on, plaintiff's in chief, 821.
 defendant's, 821.
 enlargement of, how procured, 821, 822; notice of, 822.
 expiration in the long vacation, on, 822.
 jurisdiction, where notice served out of the, 821.
 plaintiff's in reply, time for filing and list, 821.
 enlargement of, how obtained, 822; notice of, 822.
 expiration in the long vacation, on, 822.
 jurisdiction, where notice served out of the, 822 n.
motion for decree, for cross-examination in case of, 824, 914.
motion for decree, for setting down, 824.
 vacations not reckoned in, where voluntary answer put in, 802.
new trial, for motion for, 1136.

[The references are to the star paging.]

TIME — continued.

- notice of motion, for service of, 1596.
objections, for delivery of, where direction for settlement of deed not absolute, 1281; enlargement of, 1281.
pass decree or order, for service of appointment to, 1012, 1014.
periodical payments, for, expression of, in decree or order, 1006, 1785.
pending suit, for inquiry into truth of plea of, 637.
petition, for service of, 1606.
plea, for filing, 690.
 amendment of, for, 708.
 notice of filing, for giving, 690.
 setting down, for, 693; vacations not reckoned in, 693, 696.
 close day, when it expires on a, 696.
 sufficient, when, 695, 696.
pro confesso, for motion to take bill, 519.
 absolute, where decree not, 528.
 custody, against defendant in, 522.
pro confesso, for application for leave to answer, when decree taken, 527.
pro confesso decree, for motion to make absolute, 528.
proceedings, for service of, when personal service necessary, 455 n.
 when personal service not necessary, 455, 456.
prosecution, for motion to dismiss for want of, 801-803.
 amendment of bill, and further answer required, after, 803.
 amendment of bill, and further answer not required, after, 802.
 further time refused, where, 802.
 voluntary answer, after, 802.
 answer not required, and none put in, 803; vacations reckoned in, 803.
 answer, after sufficient, 801.
 evidence, after closing of, 801.
 plea, after undertaking to reply to, 696, 801.
 traversing note, after filing of, 801.
 voluntary answer, after, 802.
record for trial, for filing, 976.
replication, for filing, 832.
 amendment of bill not requiring an answer, after, 833.
 answer sufficient, after, 833.
 enlargement of, 833.
 notice of filing, for giving, 831.
 plea, after undertaking to reply to, 833.
 traversing note, after, 832.
 vacations, when reckoned in, 833; when not, 802.
 voluntary answer to amendments, after, 833.
replication, for undertaking to file, to plea, 696.
return of order for jury and panel, for, 1086.
return to writ by sheriff, for, 468, 464, 469, 470.
revivor, for application to discharge order of, 1511.
review, for filing bill of, 1580.
set aside award, for motion to, 1858.
setting down cause, for, 963.
 amendment, not requiring answer, after, 965.
 vacations not reckoned in, 965 n.
 answer not required, and none put in, where, 965.
 bill and answer, on, 964.
 vacations not reckoned in, when voluntary answer put in, 802, 803.
 reckoned, when answer not required, and not put in, 965 n.
settle minutes for service of appointment to, 1012, 1014.
settlement of deeds when parties differ, for delivery of objections, 1161, 1162.
speaking to cause on minutes, for, 1014.
subpœna, for service of, 907.
subpœna to hear judgment, for issue of, 967.
summons, for service of, 1338, 1335, 1336.
supplemental answer, for application for leave to file, 782.
taxation in case parties differ, for agreement or dissent, in case of, 1447.
traversing answer, for filing, 518.
traversing note, for filing, 514.
 demurrer or plea overruled, after, 516, 602, 701.
 service of copy of, for, 514 n.

[The references are to the star paging.]

TITHES.

- apportionment of costs in suit for, 1407.
- bill to establish general right to, against parishioners, not multifarious, 342.
- decree for account of, in one year, not a bar to bill for account in a subsequent year, 659.
- defences, what are consistent in suit for, 713; what inconsistent, 714.
- disclaimer by lessor of rights of plaintiff against lessees not prejudiced by, 707.
- grant, by deed of, must be alleged, 387.
- parties to suits for, 199, 208, 210, 274.
- lessee's title, statement of, in bill for, 321.
- modus proved by defendant, decree may be made for, 380.
- treble value, waiver, of penalty of, when necessary, 387.

TITLE,

- of suits, what it is, and what should appear in it, 1877 n.
 - class suits, 1877 n.
 - plaintiff under disability, 1877 n.
 - defendant, under disability, 1877 n.
- acceptance of, by taking possession, 1277, 1775.
- account, of, in Accountant-General's books, 1784 n., 1785, 1794.
- affidavit of, on application to deal with fund paid in under statute authorizing public works, 1011, 1803.
- book or periodical, of injunction to restrain use of, 1648.
- declaration of, 1864-1873.
 - (See DECLARATION OF TITLE ACT, 1862.)
- defective, purchaser of, not discharged if remediable, 1218.
- defendant's, statement of, in bill, 821-325.
- denial of plaintiff, by answer, not a ground for refusing discovery of accounts, 720.
- distinct, bill claiming same right by, not multifarious, 344.
- discovery as to, when not required in ejectment bill, 722.
- disputed, interpleader in case of, 1564, 1565.
- doubtful questions of, not decided on demurrer, 542, 602.
- injunction against collection of purchase-money, 1658 n.
- inquiry into, on proposed purchase or mortgage, 1339; prosecution of, 1340.
- inquiry into, when directed on sales by court, 1282 and n.
 - costs of, 1276.
- inquiry into, in specific performance suit, 987-990, 1215-1221.
 - application for, how made, 991, 992, 1216.
 - report of result, 1217-1219.
 - before Master, proceedings at, under order, 1216, 1217.
 - conveyancing counsel, reference to, 1217.
 - costs, effect of, as to, 990.
 - dismissed by order of course, bill cannot be after, 806, 811.
 - omission of, how rectified, 1029.
 - form and term of, 989, 990.
 - prosecution, bill not dismissible for want of, after order for, 806, 810.
 - review of report of, result of, 1218.
 - where objection removable at hearing, 1219.
 - where new objections can be taken, 1219.
 - right of, how lost, 989.
 - time of showing, 990, 1219.
 - doubtful title, court will not compel purchaser to accept, 989 n.
 - investigation of, on sale by court, 1275.
 - objections and requisitions on, how dealt with, 1275, 1276.
 - plaintiff's, statement of, in bill, 317-321.
 - preliminary acts necessary to complete plaintiff's, must be averred, 319.
 - plea of, what is, 672-674.
 - answer in support of, 620.
 - averments in, 678; form of, 678.
 - (See PLEA.)
 - pretended, plea of statute against buying and selling, 658, 686.
 - statement of plaintiff's, when it need not be full, 320; when it should be, 321, 371, 372.
 - stockholder, of, evidence of, 147.
 - waiver of, how stated in bill for specific performance, 821.

TITLE-DEEDS,

- agent or attorney having, not a necessary party, 299, 1826, 1827.
- certainty required in bills for discovery of, and possession, 370, 371.
- contingent remainder-man cannot sue for inspection of, 316.

[The references are to the star paging.]

TITLE DEEDS — *continued.*

- custody of, after partition, 1162.
- delivery of, to purchaser on sale by court, 1280; where sale in lots, 1280.
- infant, of, solicitor of next friend has no lien on, 81, 1842.
- production of, by incumbrancer consenting to sale, 1265.
- production of, in suits to impeach, 1880.

TITLE OF BOOK OR PERIODICAL,

- infringement of right to, when restrained, 1648.

TOLLS,

- receiver of, appointment of, 1726, 1731.

TORT,

- limitations, statute of, application of, to actions on, 647.
- personal, bill of discovery does not lie in aid of action for, 1557.

TRADE,

- breach of covenant not to, when restrained, 1654.
- covenant not to, not implied in sale of good will, 1654, 1655.
- license to carry on, extent of, 1656.
- noisy, continuance of, when restrained, 1635 n.
- receiver of, appointed when property is in nature of, 1725, 1726, 1727.

TRADE-MARKS,

- account when directed in cases of piracy of, 1649 n.
- infringement of, discovery of, must be given, 567.
- injunction against piracy of, when made perpetual, 1681.
- jurisdiction, in cases of, 1648; when relief not given, 1649.
- Merchandise Marks Acts, 1862, provisions of, as to, 1649.
- title to, how acquired, 1648.
- how strong resemblance must be, 1648 n.
- foreign manufacturer may obtain injunction to restrain use of, 1648 n.

TRADING,

- defective proof of, how remedied, 857, 858.
- notice to dispute, must be given, 65, 834, 885.

TRADING CONCERN,

- one of several proprietors of, may sue on behalf of himself and others, when, 238.

TRANSFER (OF CAUSE),

- concurrent suits, when necessary in case of, 795.
- directed, when, 898; how effected, 398.
- infants' suits in, 69, 70.
- power of Lord Chancellor or Lords Justices to order, 898, 903.
- retransfer of, how effected, 398 n.

TRANSFER (OF FUND),

- one cause to another, 1808.
- from English Court of Chancery to Irish Court of Chancery, 1803.

TRANSFER (INTO COURT),

- directed in cases of trusts, when, 1778.
- effected, how, 1787.
- limited administration, after grant of, 205.
- order for, form of, when permissive, 1793.
- how enforced, 1793.

(See PAYMENT AND TRANSFER INTO COURT.)

TRANSFER (OUT OF COURT),

- appeal against order directing, practice of Accountant-General, in case of, 1471
1814.
- married woman, into name of, under Married Women's Property Act, 1800.
- personal representatives, to, how effected, in case of, 1813.
- registrar's certificate for, evidence on which issued, 1818.
- stock, of, 1810, 1812; registrar's direction for, 1811.
- mode of effecting transfer, 1812.

(See PAYMENT AND TRANSFER OUT OF COURT.)

TRANSCRIPT,

- account in Accountant-General's books, of, 1786; fee for, 1786 n.
- of evidence, 1017, n.

TRANSLATION,

- answer in foreign language, of, how obtained, 746, 747.
- depositions in foreign language, of, how obtained, 918, 919.
- correctness of, how disputed, 919.

[The references are to the star paging.]

TRANSPORTATION,

- civil death, when a, 57.
- husband, of, wife may sue alone after, 89.
- pardon on condition of, effect of, 57, 58.
- security for costs, by plaintiff under sentence of, 82.
(See *Costs, SECURITY FOR.*)

TRAVERSE,

- interrogatories, of, must be direct, and not by negative pregnant, 725, 726.
- statutory, of plaintiff's case, where no answer required, 618.

TRaversing ANSWER (PROCESS BY FILING), 518, 514.

- leave to file, application for, how made, and evidence, 518, 514.
- time for filing, 518.

TRaversing NOTE (PROCESS BY FILING), 514-516.

- affidavit of service of, to be left on bespeaking minutes, 1010.
- amended bill, in case of, 514.
- answer, filing of, after service of note, irregular, unless by special leave, 515, 740;
- leave, when granted, and how obtained, 516.
- certificate of filing to be left on bespeaking minutes, 1010.
- demurrer, filing, without leave, after service of note, irregular, 515, 516, 592.
- demurrer overruled, filing note after, 516, 602.
- exceptions, filing note, after, 514.
- file, taking off the, on defendant's application, 516; on plaintiff's, 516.
- costs of the application, 516.
- filings, effect of, 514.
- form of, 515.
- infant defendant, not filed against, 169 n., 516.
- jurisdiction, service out of, not permitted, 515.
- married woman, not filed against, unless defending separately, 516.
- motion for decree, hearing cause on, after filing note, 516, 819.
- plea, filing, without leave, after service of note, irregular, 515, 691.
- plea, overruled, filing note after, 516, 701.
- service of, 514, 515.

(See *SERVICE.*)

- substituted service of, when permitted, 515.
- supplemental bill, filing in case of, 514.
- time for filing, 514; for service, 504 n.

TREASON,

- attainder for, effect of, 53, 54, 87.
- conviction for, effect of, 54.
- plea of conviction for, of defendants, 681; of plaintiff, 680.
- outlawry for, effect of, 54.

(See *ATTAINDER. CONVICTION.*)

TREATY,

- foreign state or British colony, of, how proved, 868.

TRESPASS,

- injunction, when granted, in cases of, 1631, 1632.
- only on principle of irreparable mischief, 1631 n.
- facts must be stated to satisfy court, 1631 n.
- destroying family grave, defacing tomb-stones, obliterating inscriptions, 1632 n.
- inspection, in cases of, 1632 n.

TRIAL OF ISSUE. (See Issue.)

TRIAL OF QUESTION OF FACT. (See Fact, QUESTION OF.)

TRIAL (NEW). (See NEW TRIAL OF ISSUE OR QUESTION OF FACT.)

TRUST,

- allegation of, in bill, 365 n.
- breach of, *cestui que trust* concurring in, necessary parties to suit to repair, 223, 224, 226, 268, 269; not represented by trustees, 222 and n., 228.
- costs, in cases of, 1411 n., 1416, 1418.
- married woman's separate estate bound by her, 187.
- persons joining in, when not all necessary parties to suit to repair, 271.
- trustees implicated in, when necessary parties to suit to repair, 268.
- jointly charged with, though relief only prayed against one, when, 381.
- deed, creditors under, all necessary parties, when, 276.
- execution of, costs of suit for, 1411, 1413, 1414, 1433, 1443
- execution of, decree for, on application of one *cestui que trust*, others not being parties, 433: of trustee against one *cestui que trust*, 226, 433.
- perpetual injunction, when granted after, 1682.

[The references are to the star paging.]

TRUST — continued.

frauds, statute of, plea of, in bills relating to, 655–657.
answer in support, and averments in, 656.

(See PLEA.)

implied, receiver, when appointed, in case of, 1721, 1724.
limitations, statutes of, application of, to, 641–644, 649.

as between trustee and *cestui que trust*, 643, 644.

payment into court, in case of, 1770–1774, 1776.

property, contingent remainder-man may sue for protection of, 316.

property, sale of, when restrained, 1652.

receiver, in cases of, 1721–1724.

resulting, where husband and wife join in mortgage, 125.

in satisfied trust term created out of wife's inheritance, 125.

persons entitled to, when necessary parties to suit, 261.

solicitor, lien in case of, 1848.

stock, of, not noticed by Bank of England, 147.

suit for execution of, effect of on powers of trustees, 1342, 1343.

term, of, husband's interest in wife's, 128–125.

will, of, heir of devisor not necessary party to suit to execute, 231.

TRUSTEE,

agent of, not a necessary party, 247.

assignee of, when a necessary party, 247.

bare trustee, not a necessary party, 246.

bid at sale, under decree, not allowed to, 1271 n.

breach of trust, liability for, 224 n.

cestui que trust, when a necessary party to trustee's suit, 220, 221.

breach of trust, in case of concurrence in, 222 and n., 223, 268, 269.

class, where suit in behalf of, 221.

cestui que trust, when not a necessary party to trustee's suit, 223–226.

trust fund improperly lent, to recover, 223, 224.

cestui que trusts, represented by, when, 212, 214, 215, 221–223, 227, 228, 256, 257, 259, 488 n., 222 notes.

administration suits, in, 222.

devisees, subject to payment of debts, 222 n.

executors with power of sale, 222 n.

foreclosure suits, in, 211, 212, 215.

payment of debts or legacies, for, 257, 258, 279.

redemption suits, in, 259, 260.

cestui que trusts, not represented by, if interests conflicting, 222 n.

or in contests *inter se*, 222 n., 224.

concurrence in breach of trust, in case of, 222 n., 224, 258 n.

executors with implied power of sale, 222 n.

redemption suits, in, 259, 260.

sale under decree, in case of, 222 n.

set aside side settlement, in suit to, 256 n.

charities, of, appointment or removal of, 1856, 1857.

compensation for time and trouble, when allowed, 1414.

costs, when allowed, or ordered to pay, 1029, 1882, 1396, 1410–1421, 1696; principles on which taxed, 1485, 1436; of removal, 1417 n.

(See Costs.)

costs, charges, and expenses, when allowed, 1233, 1411 n., 1438.

co-trustee joining in that which is breach of trust, liable, 2116 n.

when liable for acts of, 2297 n.

when not a necessary party to suit against trustee, 247, 248, 268, 271.

creditors, when represented by, 212, 225, 258.

death of, revivor when not necessary, on, 1511 n.

defence of suit, by, should be joint, 1413.

disclaiming, costs of, 1436.

execution of trusts, decree for, on application of, against one *cestui que trust*, 226, 483.

fraud by, 857 n., 619 n.

fraudulent, discovery must be given by, 568.

insolvent, as party, 215 n.

interest, when liable for, 1258 n., 2297 n.

from what time charged with, 1896.

joint liability for breach of trust, when charged with, though relief only prayed against, 381.

just allowances, what are, in case of, 1232–1236.

(See JUST ALLOWANCES.)

[The references are to the star paging.]

TRUSTEE — continued.

laches, 580 n.
 legal estate, of, parties to suit against, for conveyance, 219, 220.
 legatees, when represented by, 258.
 litigation conducted by, costs of, when a just allowance, 1283.
 loss of time, not entitled to compensation for, 1283, 1414.
 new, appointment of, proceedings before Master for, 1263.
 charities of, 1856, 1857.
 consent to act, and fitness, evidence of, 1283.
 conveyance of trust property, settlement of, 1268
 receiver, when discharged upon, 1764.
 statutory power for, 1263 n.
 one may be sued without the other, when, 248.
 opinion of counsel taken by, costs of, when a just allowance, 1238.
 party, when necessary, 198, 200 n., 205, 206, 222 notes, 247, 248, 268, 269
 account, to suit for, 268, 269.
 accountable to unsuccessful defendant, if, 247.
 administration, to suit for, 268.
 breach of trust, to suit for, 268.
 estates, having, 247.
 legal estate, having, 193, 205, 206 ; whether trust expressed or implied, 193.
 party when not necessary, 205, 206, 247, 248, 271.
 account, to suit for, 271.
 bare trustee, 247.
 equitable estate, having, 205 ; foreclosure suit, in, 205.
 intermediate, of equitable interest, 206.
 will, non-acting trustee, under, 247.
 payment into court by, when directed, 1770-1773.
 (See PAYMENT AND TRANSFER INTO COURT.)

payment of interest to, form of order for, 1799.
 payment to, wife's right by survivorship, not bound by, 116.
 production, not ordered by, in absence of *cestui que trust*, 1827.
 production by, when ordered in *cestui que trust*'s suit, 1834.
 professional charges not allowed, 1234, 1418-1415.
 receiver, appointment of, against, 1723.
 receiver, when appointed, 1731. (See RECEIVER.)
 re-imbursement, 1233 n. (a.)
 removal of, imputation of corrupt or vindictive motives, not scandalous in suit for, 848 ; *secus*, of general malice or personal hostility, 848.
 sanction of court to proceedings by, application for, how made by, 1842, 1343.
 separate estate of married woman, of, costs of, 1411 n.
 severance in defence, when sanctioned, 730.
 sole, payment out to, only ordered by consent, 1798.
 solicitor, not allowed professional charges, 1234, 1235, 1418.
 suit, effect of institution of, on powers of, 1342.
 unconscionable defence, 357 n.
 where none named in will, equity may appoint, 2030 n.

TRUSTEE OF THE PROPERTY OF A BANKRUPT,

account cannot be sued for by bankrupt, 61.
 answer of bankrupt not read against, 157.
 bankrupt not necessary party to suit by or against, 157, 215, 224, 225.
 costs, liability of, to, 64, 65, 1382, 1421, 1423.
 one set of, when allowed between bankrupt and his trustee, 730, 1432.
 right to, when he disclaims, 710.

(See Costs.)

creditors, not parties to suits by or against, 224, 255.
 estate of bankrupt, represents, 58, 157.
 evidence taken in original cause read against, 159.
 party to suit, how made, where bankruptcy *pendente lite*, 68, 159, 1525.
 property of bankrupt, vested in, 58, 157 ; although abroad, 61
 parties to suit relating to, 249, 255.
 revivor of suit by, 68, 1525 ; compelling, 68, 814.
 suit by, though not appointed at filing of bill, 68.
 surplus cannot be sued for by bankrupt, 60.
 but may be by his assignee, 61.

TRUSTEE AND *CESTUI QUE TRUST*,

accounts between, when opened, 687.
 costs, one set of, when allowed between, 730.
 limitations, statute of, does not apply between, 641, 643.
 unless possession of trustee adverse, 644.

[The references are to the star paging.]

TURNPIKE TOLLS,

receiver of, appointed, 1781.

TYPE,

alterations in print of bill, must be in, 396 n., 440 n.
in printed official copy of answer, 757.
used for printing bills and answers, 396, 756.

ULTRA VIRES,

acts of corporations, when restrained as being, 1650.
parties to suit to restrain, 243, 244.

UMPIRE,

appointment of, under Common Law Procedure Act, 1854, 1859.

UNDER-LEASE,

wife's chattel real, of, by husband, effect of, 126.
rent reserved, who entitled to, 127.

UNDER-LESSEE,

waste by, when restrained, 1680.

UNDER-SHERIFF,

delivery of attachment to, 466.
duties of sheriff performed by, what, 466.
return to process made in sheriff's name by, 469.
warrant to bailiff to execute writ made out by, 466; form of warrant 466.
(See SHERIFF.)

UNDERTAKING,

absent parties, to give effect to rights of, by plaintiff, 293.
apply, to, payment out of, when ordered on, 1801.
legacy or successive duty, of, 1007.
costs of prosecuting decree, to pay, on petition of appeal, 1480.
defendant, amendment of bill, when a discharge of, 424.
insertion of, in decree or order, 905.
not to bring action, dismissal upon, 995.
speed cause, to, 807.
unperformed, costs of motion ordered to stand over on, 1602.
written bill, on filing, 896.

UNDERTAKING AS TO DAMAGES,

interim order, when required on, 1666.
assessment of damages, on, 1666 n.
dismissal of, bill not vacated by, 1666.
given, how, 1666; by limited company, 26 n., 1666.
married woman, when required from, 113.
ne exeat, on application for, 1708.
assessment of damages under, on discharge of writ, 1714.
next friend of infant, how given by, 1708.

UNDUE INFLUENCE,

party asserting, must prove, 850.
unless impeaching voluntary instrument, on the ground of, 852.

UNINTERESTED PARTIES,

joinder of, 295-304.
objection on ground of, how taken, 299.

UNITED KINGDOM,

no part of, beyond seas, within 21 Jac. 1, c. 16, 648.

UNITED STATES,

laches by, 560 n.
President of, not made a defendant for purpose of discovery, 19 n., 141 n., 907 n.
rescinding patents granted by, 8 n.

UNITED STATES COURTS,

absent parties, 149 n., 190 n.
adequate remedy at law, 630 n. (a), 659 n. (b), 1734 n. (b).
amendments, 417 n., 2382.
answers, 737 n., 779 n.
citizenship, 857 n.
costs, 790 n.
cross-bill, 1551 n. (a), 1553 n. (a).
depositions, 894 n.
demurrer, not to an answer, 542 n., 590 n.
discovery, 1556 n.

[The references are to the star paging.]

UNITED STATES COURTS — *continued.*

former suit, pending, 634 n. (a).
 fraud and mistake, jurisdiction, 328 n.
 husband and wife as parties, 87 n.
 jurisdiction, 551 n.
 jury trial, 1071 n.
 masters in, 1071 n., 1121 n., 1171 n., 1304 n., 1820 n.
 motion to dismiss, 542 n., 551 n.
 perpetuating testimony, 1573 n. (a).
 pleas, 608 n., 694 n.
 privileged communications, 576 n.
 probate jurisdiction, 553 n.
pro confesso, 517 n.
 production of documents, 1838 n. (a).
 replication, 829 n. (a).
 review, 1576 n. (a), 1580 n. (a).
 revivor, 1508 n., 2888.
 rules of equity practice, 2875–2898 and notes.
 service, 909 n.
 state practice, how affected by, 813 n., 551 n.

State Statutes and their Effect in these Courts :

costs under, 1434 n. (a).
 crimes, 1620 n. (a).
 examination of adverse party, 551 n.
 married women, 87 n.
 plea of, 639 n.
 relief upon answer, 1551 n.

UNIVERSITY OF OXFORD OR CAMBRIDGE,

demurrer on the ground that Court of, is the proper tribunal, 554.
 office copy of record of Court of, provable as exhibit at hearing, 882.
 plea of privilege of, 628; insufficient, when, 629.
 record from library of, provable as exhibit at hearing, 882.

UNSOUND OR WEAK MIND (PERSON OF),

answer of, put in by guardian *ad litem*, 178, 753, 754.
 heading of, 781.
 jurat to, 754.
 read against him, whether it may be, 178, 841.
 required, should not be, 500.
 appearance of, entry of, 177, 538; by plaintiff, irregular, 177, 460 n., 476.
 Attorney-General may sue on behalf of, 9, 82.
 Chancery, jurisdiction of Court of, over property of, 86 n., 1361.
 competency, inquiry as to, when directed, 177.
 copy of the bill, process by service of, under General Order, not applicable, in case
 of 431
 Declaration of Title Act, 1862, concurrence in proceedings under, 1872.
 defence of, conducted by guardian, *ad litem*, 176.
 demurrer of, filing of, 591.
 guardian of, appointment of, 1861.
 guardian *ad litem* of, how and when appointed, 176, 177, 487, 475, 1607.

(See GUARDIAN AD LITEM, OF PERSON OF UNSOUND OR WEAK MIND.)
 information on behalf of, 9, 82.

limitations, statute of (21 Jac. 1, c. 16), does not run against, 647.

maintenance, allowance for, when and how ordered, 1861.

motion on behalf of, 1595.

next friend, usually sues by, 9, 82, 86.

bill filed on behalf of, without, taken off the file, 86.

(See NEXT FRIEND OF PERSON OF UNSOUND MIND.)

petition on behalf of, how presented, 1604.

plea on behalf of, put in by guardian *ad litem*, 753, 754.

prisoner for contempt, provisions for relief of, 503.

property of, jurisdiction of Court of Chancery over, 86 n., 1361.

respondent to petition, appointment of guardian *ad litem* for, 176, 1607.

service of the bill on, 444.

jurisdiction out of the, 452.

substituted service on, 444 n.

service of notice of the decree on, 484.

application for, direction as to, how made, and evidence, 484.

service, how effected, 484.

[The references are to the star paging.]

UNSOND OR WEAK MIND (PERSON OF) — continued.
 solicitor to Suitor's Fund, when appointed guardian *ad litem* of, 476.
 suits against, 130, 175-178; by, 82-86.

USURY,
 how pleaded in defence, 639 n.

VACATIONS,

Accountant-General's office, in, 412.
 amendment of bill, not computed in time for, 421.
 after plea, not reckoned in time for, 692.
 appeal or rehearing, of orders made in, 985, 1474.
 bar of the court, time for bringing up defendant arrested for want of answer,
 reckoned in, 491 n.
 contemnor, how brought to, in, 491.
 certificate (chief clerk's), made in, adoption and approval of, 984.
 days of commencement and termination included in, 412, 413.
 demurrer, time for, runs in, 591
 time for setting down not reckoned in, 594.
 dismissal of bill, when reckoned in time for motion for, 803.
 exceptions, not reckoned in time for filing, 768.
 setting down, when reckoned in time for, 768.
 judge, duties of, 985; rota of, 985 n.
 motion for decree, when not reckoned in time for setting down, 802.
 orders, special, in, how made, 984.
 plea, time for setting down, not reckoned in, 693, 696.
pro confesso, reckoned in time for obtaining order to take bill against defendant in
 custody, 493 n.
 prosecution of decree or order in, 985.
 rehearing of order made in, 985.
 replication, when reckoned in time for filing, 823; when not, 802.
 setting down cause, when reckoned in, 965 n.; when not, 803, 965 n.
 sufficiency of answer, not reckoned in time for, 786.
 times of, 412.

VALUE,

inadequacy of demurrer, on the ground of, 329, 558.
 motion to dismiss, on the ground of, 329.

VARIANCE,

demurrer for, 388 n., 545 n.
 effect of, 381 n., 860 and note.
 prescription, when rights founded on, 860.
 specific performance, in cases of, 861.

VARIATION (PAROL),

specific performance when decreed, if proved, 380 and note.

VENDITIONI EXPONAS (WRIT OF),

issued, when, to enforce decree or order, 1065.
 costs, to enforce payment of, 1456.

VENDOR,

duty of, on sale by the court, 1275 n.
 election between suit and action, when put to, 815.
 lien, 1653 n.
 specific performance, 987-989.

VENUE,

when laid by Attorney-General, 6 n.
 in cases of issues, 1112 n.
 of discovery, 1558 n. (a).
 of specific performance, 629 n.
 of cross-bill, 1553 n.

VERDICT,

adverse, at law, effect of, on plea of purchase for value without notice, 679.
 delivery of, 1109.
 discharge of jury without, on account of illness, 1109.
 on certain issues, when permitted, 1109.
 evidence, against, reconsideration of, 1109.
 new trial, at law, on account of, 1129.
 juror's knowledge of the case, should not be founded on, 109.
 kinds, different, of, 1109.

[The references are to the star paging.]

VERDICT — continued.

lot, determined by, set aside, 1108.
 perverse, new trial at law on ground of, 1129.
 recorded, how, 1110.
 retirement of jury to consider, 1107.
 further evidence not received after, 1108.
 set aside, when, 1029 n.; need not be, where new trial of issue granted, 1139.
 effect given to, in Massachusetts, 1147 n.
 in other courts, 1071 n., 1078 n., 1147 n.

VEXATIOUS SUITS,

remedy for, 354 n., 633 and note (a).
 enjoining, 1618 n. (a).

VICAR,

issue, right of, to, 1074.

VICE-CHANCELLOR,

decree or order of, not reheard by Master of the Rolls, or other Vice-Chancellor,
 1474.
 enrolment of decree or order, not vacated by, 1028.
 statutory jurisdiction, applications under, when made to, 1851.

VIEW,

application for, 1086.
 deposit on, 1086.
 issue, on trial of, 1114.
 jury, how called, in case of, 1089, 1090.
 order for, form of, 1086.
 proceedings upon, 1086.

VINDICTIVE MOTIVES,

imputation of, when not scandalous, 348.

VIOLENCE,

server of process or order, to, punishment for, 456 n., 1069.

VISITOR,

charity, of, powers of, 1854.

VIVA VOCE,

evidence, 908 *et seq.*

VOLUNTARY DONATION,

onus probandi on party setting up, 852.

VOUCHERS,

delivery up of, averment of, in plea of stated account, 667.
 production of, and marking in taking account, 1227.

WAIVER,

allegation of, in pleadings, 372 and note.
 answer, of insufficiency in, 601, 762, 766, 1821.
 amendment of bill is, unless formal, 418, 762; or after partial demurrer, 789.
 amendment of interrogatories by, 486.
 motion, on admissions in, not a, 762.
 motion for decree is, 766, 1821.
 replication, filing is, 766.
 contempt, of, 509, 510, 755, 1063.
 amendment of bill, when a, 425, 510, 522.
 amendments and exceptions, order to answer, is, 510.
 answer, acceptance of, is, 509.
 acceptance of, costs of, not a waiver, 508, 509.
 taking official copy of, when a waiver, 506 n.; when not, 506 n., 509.
 cross-bill, filing, not a waiver of plaintiff's in original suit, 510.
 taking step in the cause, 509.
 costs of exceptions, acceptance of further answer, not a waiver of right to, 774.
 defendant, by one, in favor of plaintiff, insufficient to sustain bill, if right not shown, 817.
 discharge, of right to, by defendant in custody for want of answer, 494.
 discovery, of right to protection against, none in criminal cases, 566.
 equity of settlement, of wife's, 92-100, 106.
 forfeiture, 387 n.
 frauds, of benefit of the statute of, 656.
 heir, by, of right to issue *devisavit vel non*, 168, 1074, 1075.

[The references are to the star paging.]

WAIVER — continued.

- inquiry into title, in specific performance suit, of right to, 988, 989.
- insertion of, in decree or order, 1008.
- irregularity, of, principle of, 512, 513; not applicable to erroneous order, 513.
 - acceptance of answer, by, 784; taking official copy of answer is not, 784 n.
 - amendment of bill in, 421; allowance of demurrer, after, 597.
 - appearance, by entry of, 512, 586; when it is not, 512.
 - attachment in, writ of, 512.
 - bill, in frame of, what is, 582.
 - compliance, by, 515.
 - demurrer and answer, taking office copy of, is not, 592.
 - disclaimer, in, by excepting, 762, 768.
 - jurat, in, 748, 898; must be express, 748.
 - omission of oath or attestation of honor must be express, 784, 785.
 - replication to plea of pending suit, in filing, 637.
 - revivor, in order of, 1452.
 - sequestration, in, 1050.
 - subpoena to hear judgment, in, 969.
- laches, 714 n.
- notice of motion, of, by subsequent amendment of bill, 424, 1602, 1671.
- oath to answer, 846 n.
- penalty or forfeiture of, 386, 387; effect of, 387, 563.
 - demurrer, for want of, 387, 568.
- performance, is not proved by, 860 n.
- pro confesso*, of process to take bill, what is, 524.
- relief against absent parties, of, 293.
- security for costs, of right to, what is, 30.
- title, of, how stated in bill for specific performance, 821, 872.

WALES (COURT OF GREAT SESSION OF),
office copy of record of, provable as exhibit at hearing, 882.

WAR,

- breaking out of, effect of, on suit by alien, 49, 50.
- prisoner of, may sue, when, 49.
- state of, judicially noticed, 53, 546; *secus*, between foreign States, 53, 546.

WARD (OF COURT),

- constituted, how, 1347.
- control of, 108 n.
- jurisdiction, must be kept within, 1355.
 - leave to go without, when and how given, 1355.
- Lands Clauses Consolidation Act, not constituted by payment in under, 1347.
- Legacy Duty Act, not constituted by payment in under, 1347
- payment into court of fund belonging to, 1778.
- removal of, injunction to restrain, 1660.
- settlement on, enforced in case of clandestine marriage of, though an adulteress, 107, 108.
- Trustee Relief Act, when constituted by payment in under, 1347.
- written bill may be filed to make infant, 396.

WARDEN,

- London prison, of, affidavits and answer sworn before, when, 745.

WARRANT,

- Lord Chancellor's, arrest on Sunday on, valid, 467.
 - to messenger to bring up defendant, 490.
 - to arrest defendant for breach of injunction, 1686.
 - to sergeant-at-arms to bring up contemnor, 1048.
- sheriff's, to his bailiff or officer, 466, 467.
 - arrest before delivery of, illegal, 466.
 - execution of, 466; may be out of hundred, but not out of county, 467.
 - form of, 466.
 - return of, 467.
 - under-sheriff, made out by, 466.
- Taxing Master's, 1445, 1449.
 - fees on, 1445 n.
 - review taxation, to, 1449.
 - service of, 1445; proof of, 1446.

WASTE,

- account of, incidental to injunction, 1634.
- class, one of a, may sue on behalf of self and others to restrain, 245, 433.

[The references are to the star paging.]

WASTE — continued.

- equitable, definition of, 1638; restrained, when, 1638, 1634.
- injunction to restrain, 5, 67, 1628-1630, 1673, 1681.
- application on whose, granted, 1629; against whom, 1787.
- Crown, at the suit of the, 5.
- equitable titles, in case of, 1630.
- infant *en ventre sa mère*, at the suit of, 67, 1629, 1680.
- perpetual at hearing, made, 1629 n., 1681.
- if claimed of mortgagee, must be charged in bill, 1240 n., 1920 n., 1928 n.
- not to be considered by Master unless referred to him, 1920 n.
- whether right to action at law, for, is necessary for injunction, 1629 n.
- executors restrained, 1628 n.
- insolvent debtor, 1628 n.
- restraining removal of what has been obtained by, 1628 n.
- what is, a question of law, 1628 n.
- restrained pending suit or action, 1629 n.
- urgent necessity, and clear case, 1629 n.
- doubtful cases, trial directed, 1629 n.
- life-tenant, by, when restrained, 1629.
- parties to suit, to restrain, 227.
- tenant by, when restrained, 1629.
- tenant in common, by, when restrained, 1630.
- under-lessee, by, when restrained, 1630.
- waiver of forfeiture, when necessary to bill to restrain, 386, 387.

WATERCOURSES,

- injunction to restrain pollution or diversion of, 1638, 1639.
- of a mill privilege, 1639 n.

WAY (RIGHT OF),

- certainty requisite in allegations of bill to establish, 370.
- parties to bill to establish, 210.
- use of, when restrained, 1639

WEAK MIND (PERSON OF). (See UNBOUND OR WEAK MIND, PERSON OF)

WEIGHTS,

- legal, judicially noticed, 546.

WELL,

- pollution of, when restrained, 1638 n.

WEST INDIES,

- receiver of property in, when appointed, 1781.

WESTMINSTER, THE 2d (STATUTE OF),

- plea of, 658.

WESTMINSTER (SUPERIOR COURTS AT.) (See SUPERIOR COURTS AT WESTMINSTER.)

WHITECROSS STREET PRISON,

- remand or turn over to, of defendant brought to the bar for want of answer, 491.
- of person in custody for disobedience to decree or order, 1049.
- for non-payment of costs, 1454.
- visitation of, by Solicitor to Suitors' Fee Fund, 502, 503.

WHITSUN VACATION,

- commencement and termination of, 412.

WHOLE MATTER,

- bill must be for, 329; if capable of immediate decision, 381.

WIDOW,

- affidavit of no settlement required on payment out to, 95, 96
- answer put in while covert, when not bound by, 188.
- arrears of life interest, not received by husband, entitled to, 105.
- costs of, in suit to assign dower, 1167.
- election by, in lieu of dower, parties to suit to compel, 282.
- plea of settlement by widow, to bill for discovery as to jointure, 675.

WIDOW (OF TEMPORAL PEER),

- entitled to letter missive, 442.

(See LETTER MISSIVE.)

WIFE. (See MARRIED WOMAN.)

[The references are to the star paging.]

WILFUL DEFAULT,

further consideration, defendant not charged with, on, 1370, 2061 n.
meaning and effect, 1870 n. (a).
review, supplemental bill in nature of bill of, necessary to charge, after common
decree, 1870, 1581.
evidence on application for leave to file, 1870 n., 1581.

WILL,

admission of, by heir, 875; insufficient, how remedied by evidence, 857.
cannot be made by married woman, 185, 876.
alleged in bill, how, 366.
appeal, proof of, when allowed on, 1487.
construction of, costs of suit for, 1428–1481.
copyholds, proof of, in suit to establish, 876.
establishment of, how proved in suit for, when original cannot be obtained, 878 n.
heir necessary party to suit for, 231, 232.
perpetual injunction granted against heir, after decree for, 1682.
execution of, must be proved by all witnesses at trial of issue, 1115, 1116
in suit against infant heir, 170.
inquiry not directed to remedy defect in proof of, 858, 859.
execution of trusts of, when directed without establishing will, 231, 232, 875, 876.
heir not a necessary party to suit for, 232.
exhibit, not provable as, at hearing, 883.
fraud used in obtaining, not cognizable in Court of Chancery, 552, 663, 664.
hac verba, when set out in, 363.
hearing, when allowed to be proved at, 883.
heir, may be established against, in the Court of Probate, 232 n., 876, 877.
infant heir, proof of, against, 170, 171.
married woman, appointees under, when necessary parties, 226.
when some allowed to sue for all, 226, 238.
original, of personal estate, when looked at, 877 n.
perpetuation of testimony of execution of, presumptive devisee, or next of kin can-
not sue for, 816.
plea of, 678.
probate, or stamped copy, when admitted as evidence of, 877 and n.
production of, how obtained, 877.
proof of, evidence of, 858 and n.
proof of, need not be alleged in bill against executor, 819.
proof of, must be stated by executor plaintiff, 318; unless bill filed to protect
property pending application for probate, 318.
how alleged, 818.
proof by debtor of creditor's will, effect of, 643.
proof of, in evidence in suit to establish it, 874–878.
absence of original, in case of, 878.
colonies, after proof in, 876.
defective, how remedied, 857, 858, 875.
sanity of testator must be shown in suit to establish, 851 and notes, 875.
witnesses, all must be examined, 874, 875 notes; exceptions, 875.
proof of, in evidence where suit not to establish it, 876.
proof of, in evidence on issue *devisavit vel non*, 876.
inquiry, not directed to remedy defect in, 859.
questions under, out of what fund, costs paid, 1429–1481.
secondary evidence of contents of, when admitted, 878.
thirty years old, proves itself, 878.
trusts of, heir of devisor not a necessary party to suit to execute, 231, 232
(See PROBATE.)

WITNESS,

who may be, 885 and n., 886 notes.
abroad, about to go, examination of, *de bene esse*, 932, 933, 935 n.
order for, is of course, 986.
absence of material, new trial of issue on ground of, 1123.
at law, on ground of, 1182.
postponement of trial of issue on account of, 1114.
adverse, when treated as, 1100 and n.; examiner has not power to allow him to be
treated as, 906.
affirmation of, how taken, 866 and notes.
aged, examination and cross-examination of, how taken, 910.
aged, examination of, *de bene esse*, 932, 933 and notes, 935; order for, is of course,
936

[The references are to the star paging.]

WITNESS — continued.

- answer, proceedings upon refusal to, 944, 945.
- arrest, protected from, when, 1064.
- attack on, in newspapers, a contempt of court, 887.
- attendance, of, how procured, 884, 906-909, 1158, 1826, 1827, 1836.
- costs of, 1439
- cross-examination, after notice to produce, 914.
- examiner, before, 906
- exhibits, with, at the hearing, 884, 885.
- foreign dominions of the queen, resident in, 918.
- partition, before commissioners of, 1158.
- Scotland and Ireland, residents in, 918.
- trial of question of fact, at, 1086, 1087.
- viva voce, after order to take evidence at hearing, 912.
(See SUBPOENA, WRIT OF.)
- attesting, proof of execution of instrument by, when unnecessary, 880.
- calling upon *subpœna*, 1097; *subpœna duces tecum*, in case of, 909, to produce telegrams, 907 n.
- character of, cross-examination to impeach, 1103.
- commission for examination of, bill of discovery may pray, 548.
- comparison of disputed writing by, when allowed, 1100.
- competency of, how objected to, on trial of question of fact, 1097, 1098.
grounds of incompetency, 886 n.
- conscientious scruples, persons having, 886 and n.
- contradictory statement, proof of, when permitted, 1101 and n.
- conviction, proof of previous, of, 1103.
- court may require production and oral examination of, 912.
- court, ordered out of, when, 1101
- cross-examination of, 911 n., 913, 915, 1099 n.
(See CROSS-EXAMINATION.)
- on trial of question of fact, 1101-1103; of issue, 1115, 1118.
- death of, after making affidavit or deposition, effect of, 891, 1118.
- death of, order to use evidence taken *de bene esse*, 989, 940.
(See DE BENE ESSE EXAMINATION.)
- de bene esse* examination, 932-941.
- declaration and promise, giving evidence on, 886.
- default in attendance, proceedings in case of, 908.
- defence by, 800.
- defendant, who is, cannot protect himself from discovery by answer, but must demur, 300.
- defendant should not be joined as, 296.
- demurrer by, 912-945.
(See DEMURRER BY WITNESS.)
- depositions of, 904-906.
(See DEPOSITIONS. EXAMINERS.)
- description of, in affidavit, 893.
- discredit of, by party producing, how far permitted, 1100 and n.
- disprove defence, when called to, 1105.
- examination of, 903-919.
(See EXAMINATION OF WITNESSES.)
- on trial of questions of fact, 1097-1104, 1105; of issue, 1115-1118.
- examination of, at hearing, at the instance of the court, 912.
appeal, at hearing of, 918, 1488.
- costs attendant upon, 912.
- examination of, to perpetuate testimony, only directed on bill filed, 1572.
- ex parte*, examination of, 901.
(See EXAMINATION OF WITNESSES, EX PARTE)
- expenses of, tender of, 908.
if a married woman, 908.
- expert, compensation, 911 n.
- facts within own knowledge, can only speak to, 1099.
- foreigner, examination of, how taken, 918, 919.
- forgery by, new trial on ground of, 1122.
- ill, dangerously, examination of, *de bene esse*, 933; order for, is of course, 936.
- illness, dangerous, liable to, examination *de bene esse*, 935, 936.
- infirm, examination and cross-examination of, how taken, 910.
- jurisdiction, out of, examination of, how taken, 904, 915-919.
(See EXAMINATION OF WITNESSES, COMMISSION FOR.)
- lunatic, when admissible, 1098.

[The references are to the star paging.]

WITNESS — continued.

- memorandum to refresh memory, allowed to use, when, 1099.
 - misconduct of, new trial at law on ground of, 1132.
 - mistake of, new trial at law on ground of, 1188.
 - next friend may be, 76.
 - notes, when allowed to use, 1099.
 - objecting to answer, motion that he may attend at his own expense, 945.
costs of, 945.
 - offence imputed to, cross-examination as to, 1103.
 - one, decree not made on uncorroborated evidence of, against defendant's answer, 843-847 and in notes.
 - opinion of, admissible, when, 1100.
 - party, should not be joined as, 296; unless member or officer of corporation, 141
296, 322, 378.
examination of, as, 885 n., 1189 notes, 1181 *et seq.*
before the Master, 1180-1187.
 - peer, when a, must be sworn, 886
 - perjury of, new trial at law on ground of, 1132.
chief clerk, before, penalty for, 1327.
 - previous statements in writing, cross-examination as to, 1103.
 - prisoner, a, proceedings in case of, 909.
 - privilege, 887 n., 942 n.
 - production of documents, how obtained from, 986, 987.
refusal to produce, proceedings on, 909.
- (See **SUBPOENA, WRIT OF.**)
- promise and declaration, giving evidence on, 886.
 - re-examination of, 904, 919, 981, 1104.
 - recalling, 1104
 - religion, disbeliever in, required to testify under pains and penalties of perjury,
886 n.
 - service, privilege from, 887 n.
 - signature of, to depositions, 904 and n., 917 n., 918 in n.
 - sole, to important fact, examination *de bene esse*, 983, 985.
order for, not of course, 937; affidavit in support of application, 937.
 - sworn, how, 886 and n.
 - sworn, refusing to be, proceedings against, 909.
 - trial of question of fact, how called and sworn in, 1097.

WORKS OF ART,

- publication of, when restrained, 1647.

WRIT,

- affidavit of service of, contents of, 898.
- costs of service and execution of, allowance of, 1439.
- of execution, 1042 n.
final process to enforce decree, 1042 n.
- name, place of business, and address, for service (if any) of solicitor or party (if acting in person) suing out, to be placed on, 453, 454, 455.
.and in agency case, principal solicitors also, 454.
(And see the particular writs.)

WRITTEN BILL,

- allowed to be filed, when, 396; necessary undertaking, 396.
- amendment of, 401 n.
- costs of, 896.
- file, taken off, if printed bill not duly filed, 396, 897.
- injunction cases, in, 396, 1619.
- ne exeat*, in cases of, 396, 1706.
- paper on which written, 396.
- restoration of, after having been taken off file, 396, 897.
- service of, same as if printed, 442.

(See **SERVICE.**)

- ward of court, to make infant a, 896.

WRITTEN INSTRUMENTS,

- cancelling under general prayer, 878 n.
- pleading, 868 n.

(See **CONTRACT, CONVEYANCE, DEED, MORTGAGE, REFORMING DEED, SPECIFIC PERFORMANCE.**)

INDEX

TO

THE APPENDIX OF FORMS.

-
- ABSOLUTE CONVEYANCE,**
decree for, free from all equity of redemption, 2216.
- ABSOLUTE DECREE,**
against infant on attaining his majority, 2290.
- ABSOLUTE DEED,**
bill against mortgagee, who took by absolute deed, and sold without notice, for value of land, &c., after deducting debt and interest, 1923.
decree against mortgagee as prayed, 2227.
treated as a mortgage, decree for redemption, 2226, 2227.
- ACCOUNT,**
bills for, 1927.
(See TABLE OF CONTENTS of this volume.)
not necessary plaintiff should submit to, in bill for, 1928 n.
stated, plea of, 2101.
plea of stated account and release, 2095 n.
decrees referring to Master to take, 2193, 2195, 2294.
directing allowance of stated account, 2193.
 not to disturb settled account, 2193.
 leave to surcharge and falsify, 2194.
 rests in, 2195.
setting aside, 2194.
 for leave to show errors in account *prima facie* conclusive, 2194.
of funds in the hands of agent of foreign principal, that could not be come at to be attached, &c., reference to take, 2195.
bill for, must show by specific statement of facts that the accounts are intricate, &c., to give jurisdiction in equity, 1929 n.
demurrer to bill for, 1929 n.
- ACCUMULATIONS,**
of funds, statement in bill as to, 2042.
- ACQUIESCENCE,**
of *cestui que trust* in application of funds by trustee, statement in answer, 2116.
- ACTION. (See LAW.)**
injunction staying present and future, 2304.
- ADDRESS,**
of bill, 1878.
- ADMINISTRATOR,**
de bonis non of an executor, cross-bill by, 2073.
bill against, by next of kin for shares of estate, 1997, 1999.
 by surviving partner, claiming real estate as partnership property, 1950.
to a bill by, plea that supposed intestate is living, 2097.
plea that plaintiff is not, 2097, 2108.

[The references are to the star paging.]

ADMINISTRATOR — continued.

- to a bill against, plea denying that plaintiff sustained that character, 2098.
- to a bill of revivor against, plea denying that defendant ever was executor or administrator in the State where suit is sought to be revived, 2098.
- petition by, to be admitted to prosecute, 2139.
- petition for notice, to appear and defend, 2139.
- responsible for loss where he permits surviving partner of intestate to take and trade with the joint-stock and assets, 2297 n.
- form of decree in such case, 2297 n.
- decree directing an, how to appropriate the residue of an estate in payment of legacies, 2203.

ADOPTION,

- prayer for, of proceedings had in another suit, 2043.

ADULTS AND INFANTS,

- commencement of answer by, 2112.

ADVANCES,

- decree that deed do stand security for, 2278.
- that deed do not stand security for, 2274.

ADVERSE POSSESSION,

- plea of, 2095 n.

AFFIDAVITS,

- general form, 2157, 2158.
- to be annexed to interpleader bill, 2003, 2004.
- that plaintiff has not deeds in his possession to annex to bill, 2159.
- to be admitted to sue or defend *in forma pauperis*, 2159.
- of service of notice of motion, 2159.
- of personal service of a bill, 2160.
- of service of an amended bill, 2160.
- of delivery of interrogatories, 2160.
- to obtain order for guardian, *ad litem*, 2161.
- of tender of costs, where defendant taken under attachment, 2161.
- as to correctness of translation, 2161.
- as to production of documents, 2162.
- of mortgagee having attended to receive mortgage money, 2162.
- to obtain *ne exeat regno*, 2163, 2164.
- to obtain writ of *distringas*, 2164.
- of waste, to obtain injunction, 2165.
- identifying a person, 2165.
- verifying registry of burial and identity, 2166.
- of the execution of deed by attesting witness, 2166.
- by person not witness, 2166.
- of the age of a witness, for examination *de bene esse*, 2167.
- to obtain order for commission, or for examiner, to examine witness abroad, 2167.
- in support of application to amend bill, 2167.
- for leave to file voluntary answer after time, 2168.
- that no answer has been delivered, to found application for decree *pro confesso*, 2168.
- of having discovered new matter, for review, 2169.
- by executor to restrain action after decree, 2169.
- verifying receiver's account, 2170.
- demurrer for want of one being annexed to a bill of interpleader, 2090.
- demurrer for want of affidavit of loss, to a bill for relief on lost bond, 2090.
- petition to prove exhibits by, at hearing, 2143.
- set-off of costs for, where improper or of unnecessary length, 2191
- joint, and affirmation, 2158.
- where in foreign language, translation to be filed, 2176 n.

(See JURAT.)

AFFIRMATION,

- by Quaker, 2157.
- by other persons, 2158.
- joint, and affidavit, 2158.

AGENT,

- bill relating to, charging mismanagement, 1957.
- foreign, decree for account of funds, that could not be attached, in hands of, 2195.

[The references are to the star paging.]

AGREEMENT,

bill for specific performance of, 1889.

(See SPECIFIC PERFORMANCE.)

bills to cancel, rectify, and reform, 1961.

decree for specific performance of, to execute a mortgage, 2216.

ALIEN,

plea that plaintiff is alien enemy, 2095.

ALIMONY,

decree for, on divorce from bed and board, 2289.

ALLOWANCE,

motion for, by defendant, out of property in hands of receiver, 2148.

AMEND,

bill, petition for leave to, 2134, 2135, 2136.

affidavit in support of application for leave to, 2167.

order for leave to, injunction bill sworn to, 2368.

for leave to withdraw replication and amend, 2369.

AMENDED BILL,

of interpleader, form of, 2006.

ANCIENT WINDOWS,

bill to restrain obstruction of, 2038.

ANNUAL RESTS,

directions for, against executors and trustees, 2298.

ANNUL.

bill to, contract for fraud, 1966.

decree to, proceedings in insolvency, 2283.

decrees to, for fraud and misrepresentation, 2268.

ANSWER,

prayer for, oath waived, 1885.

form of commencement of, in different cases, 2109.

 of introduction, or words of course preceding, 2110.

 of conclusion of, 2110.

modern English form of, 2111.

 what it must contain and how framed, 2111 n.

of an infant, 2112.

of adults and infants, 2112.

form of further, after insufficient answer, 2112.

 to bill, and answer to amended bill, 2112.

to original bill, and bill of revivor and supplement, 2112.

of lunatic and his committee, 2112.

of husband, disclaiming interest in legacy bequeathed to his wife, 2113

of *feme covert* separated from her husband, 2113.

 order must be had for this purpose, 2113 n.

and disclaimer, 2113.

objecting to answer particular interrogatories, 2114.

that documents called for contain nothing in support of plaintiff's case, 2114.

that letters, &c., called for contain confidential communications, 2114.

raising the defence of the statute of limitations, 2115, 2116.

that *cestui que trust* has consented to the application of trust fund, 2116.

claiming benefit of statute of frauds, 2116, 2117.

prescribed by chancery rules in New Hampshire, purchaser for valuable consideration without notice, 2118.

common forms of statements and allegations in answers, 2119.

 reference to books containing accounts, 2119.

 accounts refused, as useless before decree, 2119.

 admission for the purposes of the suit, 2119.

 claims made by defendant, 2119.

 craving leave for greater certainty, 2119.

 to refer to co-defendant's answer, 2119.

information and belief, 2120.

ignorance, 2120.

qualified denial, 2120.

reference to schedule, 2120.

[The references are to the star paging.]

ANSWER — continued.

release, craving same benefit as if pleaded, 2120.
settled accounts, claim of, 2121.
submission by trustees to act, 2121.
traverse, 2121.
trustee, desired to be discharged, 2121.
vexatious suit, settled accounts, claim of benefit of defence as if raised by plea or demurrer, 2121.
want of interest in plaintiff ; craving same benefit as if defence by demurrer, 2122.
claim of benefit of same defence to amended as to original bill, 2122.
exceptions to, 2124, 2125.
what should contain, 2124 n.
notice of filing, 2128.
and demurrer, 2087.
and plea, 2094.
in support of plea, 2095 n.
oaths to, 2171 and n.
of a foreigner, 2171.
affidavit of interpreter to be annexed to answer, 2171.
to answer of corporation, 2172.
where married woman answers separately from her husband, 2175.
English forms, 2172.
of two or more defendants, 2173.
of defendant, who cannot write, 2173.
where witness reads answer to marksman, 2173.
of blind defendant, answer read to him by officer, 2174.
answer read to him by witness, 2174.
of deaf and dumb defendant, 2175.
of foreigner in English, through an interpreter, 2175
in foreign language, oath interpreted, 2175.
petition to take, without oath, 2184.
sworn by guardian of infant, form of jurat, 2178.
order that defendant may put in, in foreign language, 2369.
order on hearing of exceptions for insufficiency in, 2369.
allowed, 2370.
overruled, 2370.
some allowed, others overruled, 2370.

APPEAL,

petition for and rehearing, 2155.
certificate of counsel to, 2156 and n.
order upon, in Massachusetts, 2192.

APPEARANCE,

leave for defendant to enter, on return within jurisdiction and consenting to be bound, 2367.

APPOINTMENT,

notice of motion for, before examiner to take cross-examination of deponents in affidavits, 2180.
of a representative, 2360

(See REPRESENTATIVE.)

ARBITRATOR,

demurrer by, when made party to bill to impeach his award, 2091.

ASSIGNEE (OF INSOLVENT DEBTOR),

commencement of bill by, 1880.

bill by, to restrain proceedings under an attachment of debtor's property in another state, 1995.

bill against, by *feme covert* and her children for a settlement, 2000.

of a bankrupt defendant, supplemental bill against, 2048.

bill by assignee of debt, allegation in, 2042.

ASSIGNEE (OF DEBT),

cannot maintain suit merely as such, unless some impediments thrown in his way, 2048 n.

ATTACHMENT,

for contempt in disobeying injunction, petition for, 2150.

writ of, 2150 and n.

notice of motion for an, for contempt, 2133.

[The references are to the star paging.]

ATTACHMENT — *continued.*

affidavit of tender of costs when defendant taken under, 2161.
order for an, for breach of an injunction, 2151.
order for sequestration on return of, 2364.
order where party brought up on, 2364.
order for sheriff to return writ of, 2366.

ATTORNEY,

plea by, to discovery of what came to his knowledge through his client, 2107.

ATTORNEY-GENERAL,

commencement of suit by, on behalf of government, 1881.
where there is a relator, 1882.
conclusion of bill against, 1887.
order to tax costs of, separately from relator's in suit respecting a charity, 2212.

AVOIDING,

deeds and other instruments and transactions, 2268–2281.
decree for, release, 2268.
purchase, 2268.
transfer of scrip shares, 2269.
settlement by lunatic, 2270.
conveyance in contemplation of insolvency, 2270.
contract for sale of real estate, 2272.
levy on real estate, 2273.
levy in favor of judgment creditor of insolvent debtor, 2274.
fraudulent conveyance, 2274.
assignment of a judgment, 2277.
deed of ancestor, except as to actual advances, 2278.
sale of testator's share in a partnership, by his executors, 2279.
a direction in a devise of an estate for charitable purposes, 2280.
a purchase of an estate by trustee, 2296 n.

BANKING CORPORATION,

commencement of bill by, 1880.

BID,

leave to parties to bid at sale, 2362.

BILLS. (See TABLE OF CONTENTS, Vol. 3, Part I.)

formal parts of a,
title, 1877 and n.
address, 1878.
commencements, 1879.
in special cases, 1879–1882.
conclusions, 1887, 1888.
of premises or stating part, 1882.
charge of confederacy, 1882.
where may or must be omitted, 1882 and n.
charging part, 1883.
where may be omitted and rules concerning, 1883 n.
jurisdiction clause, 1883.
where may be omitted, 1883 n.
obsolete in England, 1883 n.
interrogating part, 1884.
where may be omitted, 1884 n.
general interrogatory only in Maine, 1884 n.
interrogating part; bill to conclude with general interrogatory in Massachusetts, 1884 n.
no interrogatories in bill allowed in England, 1884 n.
form of, and rules respecting interrogating part in United States courts, 1884 n.
prayer for relief, 1885.
(See PRAYER.)
answer, oath waived, injunction, declaration of trust, conveyance, 1885.
general and special, rules respecting in United States courts, 1885 n.

[The references are to the star paging]

BILLS — *continued.*

- in New Hampshire, 1885 n.
 - in England, 1885 n.
 - prayer to restrain proceedings, &c., and for injunction, 1885.
 - for *ne exeat*, 1886.
 - for account, &c., 1886.
 - for production of deeds, &c., 1887.
 - for *subpoena*, 1887.
 - rules concerning in United States courts, 1887 n.
 - may be omitted in New Hampshire, 1887 n.
 - bill contains none in England, 1887 n.
 - for process when government is defendant, 1887.
 - for injunction and *subpoena*, 1888.
 - for *ne exeat* and *subpoena*, 1888.
 - for specific performance of agreements, 1889–1902.
- (See SPECIFIC PERFORMANCE.)
- for charging estate of married woman on her bond, 1903.
 - for dower, 1905.
 - for foreclosure of mortgages, 1908.
 - for redemption of mortgages, 1918.
 - for an account, 1927.
 - for contribution, 1930.
 - by creditors, 1932.
 - respecting excessive use of right, 1941.
 - relating to partnership matters, 1943.
 - relating to an agent, 1957.
 - to cancel, rectify, and reform agreements, &c., 1961.
 - to restrain infringement of copyrights, 1973.
 - of patent rights, 1976–1987.
 - to restrain use of trade-marks, 1987.
 - by joint owner in reference to joint property, 1994.
 - by assignee to protect estate of insolvent debtor, 1995.
 - by next of kin for account and distributive share, 1997.
 - by *feme covert* and children for settlement, 2000.
 - of interpleader, 2001.

(See INTERPLEADER.)

- prayer in a bill of interpleader by an insurance company, 2003.
- by executor in nature of interpleader, 2010.
- for payment of legacies, and to carry trusts of will into execution, 2012.
- by widow of testator, claiming share of profits of special partnership, as part of her annual income, 2015.
- relating to trusts by executor and trustee, 2017.
- prayer in, against executors and residuary legatees, latter having raised a question of satisfaction, 2020.
- by children whose income had been used to pay debts and legacies, for reimbursement, 2021.
- to have certain testamentary papers declared void, 2025.
- for partition, 2027.
- for appointment of new trustees, 2028.
- for discharge as trustee, 2031.
- for fraud, 2032.
- to restrain waste, 2036.
- for injunction to prevent obstruction of ancient windows, 2038.
- quia timet*, 2040.
- to perpetuate testimony, 2044.
- for discovery, 2045.
- supplemental, 2048.
- against assignee of bankrupt defendant, 2048.
- in patent cause, stating fact of extension, 2049.
- second in patent cause, stating facts of surrender and reissue, 2050.
- after hearing, and reservation of case for full court, 2052.
- to an original and amended bill, 2054.
- revivor, by administrator, executors having renounced probate, 2056.
- on marriage of female plaintiff, 2057.
- revivor and supplement, 2058, 2060, 2062.
- review, 2064.
- for errors of law, apparent on decree, 2064.

[The references are to the star paging.]

BILLS—*continued.*

- on discovery of new matter, 2065.
- supplemental bill in nature of bill of review, 2067
 - to suspend a decree, 2067.
 - to set aside a decree for fraud, 2069.
 - in the nature of bill of revivor, 2071.
 - to carry decree into execution, 2072.
- cross-bill, 2073.
- retained to afford compensation for lasting and beneficial improvements made by plaintiff, who had taken possession of real estate under an agreement within the statute of frauds, 2278 n.
- statements in bill, where joint-stock-company banking company are suing, 2042.
 - in a case of a joint-stock banking company where their public officer is made a defendant, 2042.
 - where deeds are not in plaintiff's possession, 2042.
 - where defendant is out of jurisdiction, 2042.
 - respecting accumulations of funds, 2042.
- allegations in bill by assignee of debt against debtor, 2042.
- prayer in bill for transferring fund from credit of one cause to that of another, 2043.
- prayer for the adoption of proceedings had in another suit, 2043.
 - that boundaries may be ascertained, 2043.
 - for declaration of rights, 2043.
 - respecting formal party, 2043.
- prayer in bill seeking an account of partnership dealings, 1948.
- charges and prayer in bill to rectify settlement and remove trustees, 1970.

BOND,

- of receiver, 2342.

BOUNDARIES,

- prayer that they may be ascertained, 2043.

BREACH OF INJUNCTION,

- order of committal for, 2325, 2326.
- sequestration for, 2327.

BREACH OF TRUST,

- by executor, &c., 2295–2299.

CANCEL,

- bills to cancel, &c., agreements, &c., 1961–1973.

(See TABLE OF CONTENTS to this volume.)

- decrees to, deeds and other instruments, 2268, 2280.
- extent and grounds of jurisdiction, 1961 n.

CHARGING PART (of Bill),

- none in modern English bill, 1883 n.
- where may be omitted, 1883 n.

CHARITY,

- information to establish on behalf of parish, 2078.
- decree establishing will as to, excepting that part of the charity legacies directed to be raised out of real estate, 2206.
- decree establishing will except as to charity devise, 2206.
- decree declaring void gifts in, 2206.
 - directing inquiries as to, 2206.
 - for scheme for regulating, 2207.
 - directing inquiry as to value, rents, income, &c., 2207.
 - adopting new scheme for, 2208–2209.
- extract from scheme constituting a, &c., 2211.
- apportionment of costs among several, 2212.
- relator's extra costs of suit out of charity funds, 2212.
- order to tax costs of Attorney-General separately from relator's, 2212.
- reference to master to report scheme, and decree thereon, 2209.

CHATTELS,

- bills for redemption of, pledged, 2230.

CLAIM,

- of right in defendant, demurrer to interpleader bill, because it does not show, 2090.

[The references are to the star paging.]

COMBINATION,

charge of in bills, 1882.

none in modern English form of bill, 1882 n.
where may or must be omitted, 1882 n.

COMMITTEE,

bill by, in behalf of idiots and lunatics, 1880.
answer of idiots, &c., by, 2109.

COMMENCEMENTS,

of bill and information, general and special, 1879-1882.

general form, 1879.

in circuit courts of the United States, 1879.

in State courts, 1879.

in special cases, 1879.

husband and wife, 1879.

wife suing alone, 1880.

wife by next friend, husband a defendant, 1880 ; husband residing abroad
1880.

as a *feme sole*, 1880.

infants, 1880.

lunatics, &c., 1880.

assignee of insolvent debtor, 1880.

a person deaf and dumb, 1880.

banking corporation, 1880.

railroad corporation, 1881.

municipal corporation, 1881.

foreign corporation, 1881.

foreign republican state, 1881 and n.

creditor, suing on behalf of himself and others, 1881.

shareholders in a company, 1881.

in suits on behalf of the government, 1881.

where there is a relator, 1882.

where the case is by information and bill, 1882.

of demurrs, 2085 and n.

of pleas, 2094 and n.

of answers, 2109.

of decrees, 2181, 2182.

COMMISSION,

to examine witnesses abroad, prayer for, 2032, 2035.

affidavit to obtain order for, 2167.

COMMON SEAL,

answer of corporation under, 2172.

COMPANY,

commencement of bill by shareholder in, 1881.

COMPOUND INTEREST,

charged against executors by decree, 2298.

COMPROMISE,

authority given receiver to, 2349.

CONCLUSIONS,

of bills, 1887, 1888.

of demurrs, 2085.

of pleas, 2094.

of plea of release, 2102.

of answers, 2110.

CONFEDERACY CLAUSE (in Bill), 1882

none in modern English bill, 1882 n.

where may be omitted, 1882 n.

where must be omitted, 1882 n.

CONFIDENCE,

plea that a discovery would be a breach of, 2107.

CONFIDENTIAL COMMUNICATIONS,

plea that discovery sought would disclose, 2107.

answer as to, 2114.

CONFIRMING,

Master's report, decree for, 2245, 2362.

[The references are to the star paging.]

CONSIDERATION,

plea of purchase for valuable, 2095 n.
affirmation of actual payment of, in a plea of purchaser for a valuable consideration without notice, 2105, 2106.

CONTEMPT,

notice of motion for attachment for, 2133.
petition for discharge out of custody of a defendant committed for, 2140.
petition for an attachment for, in disobeying an injunction, 2150.
 of plaintiff, for *habeas corpus*, to bring up defendant to answer for, 2141.
writ of attachment for, 2150 and n.
affidavit of tender of costs where defendant taken under attachment for, 2161.

CONTRIBUTION,

bill for, to general average loss, 1930.
decree for, between co-sureties and principal, in suit by surety, 2249.
 inquiry whether some of co-sureties can contribute, 2249.
one co-surety unable to pay his full share, costs of resisting contribution, 2250.
between co-defendants, in suit by creditor, 2251.
to general average loss, 2251.

COPARTNERSHIP. (See PARTNERSHIP.)

COPYRIGHT,

bills to restrain infringement of, 1973.

CORPORATIONS,

commencement of bills by, 1880, 1881.
 by and against, and individuals, 1897, 1920, 1930, 1938, 1978,
 1979.
bill against, and its stockholders, by creditors, 1935.
authentication of answer by, 2172.
common seal, 2172.
usual direction, to pay interest to, 2187.
order for sequestration in case of, 2365.

COSTS,

decree for taxation and payment of, by one party to another, 2188.
 plaintiff to pay one defendant's costs, and recover them with his own from a co-defendant, 2188.
that costs of the application be costs in the cause, 2188.
that petition be dismissed with costs, 2188.
that costs be taxed and paid without prejudice, how ultimately to be borne, 2188.
made charge on estate, 2188.
that none be given on either side, 2188, 2357.
that none be given to either side, as to part, 2189.
directing taxation of plaintiff's and defendant's respective costs of parts of suit, involving apportionment of general charges, with set-off, 2189.
directing taxation of plaintiff's costs, except as to part, 2189.
directing taxation of defendant's costs of suit with set-off of part, caused by defendant's wrongful claim, including costs of co-defendants; husband and wife; and bill to redeem, 2189.
directing taxation of, except so far as increased by particular claim, &c., 2190.
up to a particular time, 2190.
to be paid by plaintiff and defendant respectively from and to a particular time; set-off, 2190.
of suit taxed, and set-off against sum due, 2190.
directing Master to look into petition and affidavits, and if improper or of unnecessary length, to distinguish and set-off, 2191.
decree for taxation of, and payment out of funds in court, 2191, 2301, 2302.
 taxation and payment to solicitors, 2191.
 taxation of costs of application, payment out of cash, 2192.
 apportionment of, among several charities, 2212.
 relator's extra costs of suit out of charity funds, 2212.
order to tax costs of Attorney-General separately from relator's, 2212.
lien on costs in another suit declared, 2218.
decree for costs, charges, and expenses, in redemption suit, 2229.
 out of fund, in creditor's suit, 2191 n.
supplemental decree, as to, 2204.

[The references are to the star paging.]

COSTS — *continued.*

to be taken out of general assets, as between solicitor and client, 2199.
and charges, including fees of counsel, for an agreed sum, out of estate, 2200, 2201.
(See EXECUTORS AND TRUSTEES.)

COUNSEL,

certificate of, on petition for rehearing, 2156 and n.

COURT OF LAW,

prayer for an injunction to restrain proceedings in, 1885, 1961, 1963, 1964, 2055.

COVENANT,

injunction to restrain use of an estate in violation of covenant respecting, 2312.
bill by surety to compel debtor to pay debt incurred by breach of, 2040.

COVERTURE,

plea of, of plaintiff, 2096.

CREDITORS,

suits by, on behalf of themselves and others, 1881.

bills by, 1932.

(See TABLE OF CONTENTS to this volume.)

against devisees in trust and executors of testator, 1932.

against a corporation and its stockholders, 1935.

against foreign debtor, and agent having funds that could not be attached,
1938.

may come into Court of Chancery for discovery and distribution of assets, against
executor, 2294 n.

CROSS-BILL,

form of, 2073.

CROSS-CAUSE,

petition to use depositions in, 2142.

CROSS-EXAMINATION,

of deponents in affidavits, notice of appointment for, before examiner, 2130.

CUSTODY,

form of petition for discharge of defendant out of, 2140.

petition for *habeas corpus* to bring defendant in custody of sheriff to bar of court to
answer for contempt, 2141.

of infants, decree concerning, committed to mother, father excluded except at stated
time, 2293.

order for *habeas corpus*, on motion, 2293.

DEBT,

statement in bill by assignee of, 2042.

when assignee of debt entitled to sue in equity, 2043 n.

DECLARATION,

of trust, prayer for in bill, 1885.

court refused to entertain bill merely for, 2260 n.

of matters of fact, or of the rights of the parties in decrees, 2181 n.

of the exclusive rights of a railroad corporation under its charter, 2321.

of rights, prayer for, 2043.

DECLARATORY DECREE,

on special case, 2183.

court declining to answer one of the questions, 2183.

when court may make, 2181 and 2182 in n.

DECREE,

bill of review for errors of law apparent upon, 2064.

bill in nature of bill of review, where party is bound by, 2067.

bill to suspend, 2067.

obtained by fraud, bill to set aside, 2069.

bill to carry, into execution, 2072.

plea of, 2099.

notice of motion for, 2181.

notice to pass, 2132.

to settle minutes of, 2131.

to vacate enrolment of, 2132.

petition to enter *nunc pro tunc*, 2144.

leave to enter, *nunc pro tunc*, 2358.

[The references are to the star paging.]

DECREE — continued.

- declaratory decrees, 2181 and 2182 in notes.
forms of in different cases, 2181 *et seq.*
(See TABLE OF CONTENTS to this volume.)
introductionary part of, at the hearing, 2181.
 in United States court, 2182 and n.
on motion for decree, 2183.
declaratory, on special case, 2183.
usual directions in, 2185.
for taxation and payment of costs between parties, 2188.
for taxation and payment of costs out of fund, 2191.
by consent, 2192.
approving and confirming certain acts done, and matters agreed upon between parties, 2192.
reserving case, 2192.
for account, 2193.
establishing will, 2197.
declaring devise good, 2197.
declaring real estate charged with debts, 2197.
declaring that devise on double contingency failed, 2197.
declaring forfeiture, 2198.
directing inquiry as to domicile, 2198.
directing executors to pay mortgage out of general assets, 2199.
giving construction of will and directions to execute, 2199, 2301.
settling the basis and amount of the principal residuary fund of an estate, fixing the time when the income of those entitled shall begin to accrue ; costs and charges out of principal fund, 2200.
declaring the rights of parties under a will, and order of reference ; further consideration reserved, 2202.
directing an administrator *de bonis non* how to appropriate the residue of an estate in payment of legacies, 2203.
supplemental decree, 2204.
declaring void certain testamentary papers and ordering the disposition of deceased's property, 2204.
as to charitable gifts, 2206.
as to administering charity, 2207.
 further order as to, 2208.
of foreclosure of mortgage, 2213.
(See FORECLOSURE, MORTGAGE.)
respecting equitable mortgages, 2216.
in regard to liens, 2217.
(See LIEN.)
for redemption, 2221.
(See REDEMPTION.)
as to partnership agreements, accounts, dissolution, &c., 2235, 2236, 2237 and n.
(See PARTNERSHIP.)
for accounts between ship-owners, 2247.
(See SHIP-OWNERS.)
for partition, 2254.
(See PARTITION.)
for specific performance, 2254.
(See SPECIFIC PERFORMANCE.)
for specific relief, 2267.
 lost instruments, 2267.
(See LOST INSTRUMENT.)
respecting fraudulent dealings, 2268.
(See FRAUDULENT DEALINGS.)
for reforming a conveyance, 1971, 1972.
declaring the invalidity of deeds and other instruments, for fraud and other causes, 2268-2281.
ordering bond and mortgage obtained by oppression for much larger amount than due, to stand as security for amount really due and a retransfer on payment of that amount, 2278 n.
for sale and reimbursement to children out of the proceeds of an estate, the income of the residue of which, after payment of debts and legacies, had been given to them by the will of the testator, but which income, with their assent, had been taken to pay off the said debts and legacies, which were directed by the testator to be paid by the sale of certain of his real estate, 2281.

[The references are to the star paging.]

DECREE — *continued.*

declaring the validity of a deed to transfer the estate named in it, and ordering that the grantees be let into possession of the premises, and that they be allowed to enjoy the income thereof, 2282.

annulling proceedings under one petition in insolvency, and directing a warrant to be issued on another, 2283.

as to particular persons, 2285.

feme covert, 2285-2289.

(See **FEME COVERT.**)
infants, 2290-2294.

(See **INFANTS.**)

decree *nisi* against infant, 2290.

absolute on attaining his majority, 2290.

for absolute foreclosure, 2290.

declared not bound by decree, 2291.

executors and trustees, 2294, 2302.

(See **EXECUTORS AND TRUSTEES.**)

solicitors, order *nisi* to strike off the roll for misconduct, 2302.

order absolute, no cause against being shown, 2302.

pro confesso, where defendant does not appear at the hearing, 2355.

where defendant appears and waives objections, 2355.

for injunctions, 2303-2324.

for *ex parte interim* order, 2303.

for injunction, staying proceedings in other courts, 2304.

waste, trespass and nuisance, 2305-2312.

to restrain violation of covenant, 2312.

infringement of copyright, 2313.

patents, 2314.

trade-marks, 2317-2319 and n.

in cases of partnership, 2319 and n.

negotiating securities, 2319.

transfers, 2320, 2324.

railways, 2320-2323.

mandatory, 2323.

to restrain towns and officers, 2323 and n.

for dissolving or continuing injunction, 2325.

for making injunction perpetual at hearing, 2325.

of committal for breach of injunction, 2325, 2326, 2327.

order for *ne exeat*, 2328-2330.

in interpleader suits, 2330-2324.

order for issues, 2334-2337.

for new trial, 2338.

on equity reserved, after trial, 2338, 2339.

for receiver, 2339-2344.

order for management of estates by, 2344.

for receiver and manager abroad, 2353.

for receiver, for account and payment by, 2345.

for discharge of, 2345, 2351.

to pay off and keep down charges, 2346.

in insolvency proceedings, 2347.

of reference respecting receiver's compensation, 2352.

on receiver to pay taxable costs out of funds in his hands, 2352.

for production of documents, 2353.

for delivery out of documents, 2354.

for inspection of documents, 2354.

of dismissal at the hearing, 2355.

leave to enter *nunc pro tunc*, 2358.

of revivor and supplement, 2358, 2359 and n.

on supplemental bill, 2359.

execution of decrees and orders, 2364-2366.

(See **EXECUTION.**)

appointing new trustees, 2300.

confirming order previously made *de bene* in a cause, 2372.

DEED,

statements in bill to cancel, obtained by fraud, 1965.

decree ordering defendants to execute a mortgage deed, 1972.

affidavits of execution of, 2166.

{The references are to the star paging.]

DEED — *continued.*

statement in bill, where deeds not in plaintiff's possession, 2042.
affidavit of plaintiff where they are not in his possession, 2159.
declared void except as to actual advances and charges, 2278.
set aside for fraud, and the fraud being meditated, the deed not allowed to stand for
actual advances, 2274.
interrogatory as to, 2082.

DEFENCE,

forms of various modes of, 2085 *et seq.*
demurrers, 2085.
pleas, 2094.
answers, 2100.

DEFENDANT,

statement in bill when defendant is out of jurisdiction, 2042.
order for service of bill on, 2371.
order for plaintiff to appear for, when served with bill out of jurisdiction, 2371.
order to take bill *pro confesso*, defendant being out of jurisdiction, 2372.

DEMURRER,

leave to correct clerical error in, 2086 n.
must state cause arising out of bill, but must not introduce a material fact, 2086 n.
forms of title and commencement, 2085 and n.
conclusion, 2085.
cause of demurrer, 2086.
for want of equity, 2086.
because plaintiff has plain and adequate remedy at law, 2086.
for multifariousness, 2086.
to part of the bill and plea to residue, 2087 n.
to part and answer as to residue, 2087, 2088 and n.
general form of demurrer, plea and answer, 2088.
for want of parties, 2089.
to bill exhibited by infant, no next friend named, 2089.
to bill in which plaintiff claimed under a will, and it was apparent on face of bill that
he had no title, 2091.
to bill of interpleader, for want of necessary affidavit and for want of equity, 2090.
because the bill of interpleader did not show any claim of right in de-
fendant, 2090.
to bill for relief on lost bond, for want of necessary affidavit, 2090.
to bill for relief against mandamus, 2091.
to bill to restrain private nuisance, plaintiff not having established his right at law,
2091.
for want of privity to a bill by an unsatisfied legatee against debtor of his testator,
2091.
by an arbitrator made party to a bill to impeach his award, 2091.
to a bill against a defendant by a judgment creditor, who had not sued out execution
for a discovery of goods of the debtor, alleged to have been fraudulently possessed
by the defendant, 2092.
where discovery might subject defendant to pains, penalties, and forfeitures, 2092.
to a bill of review and supplemental bill, on the ground that there are no errors in
the decree, and that the leave of court was not first obtained, 2092.
petition to withdraw, 2141.
order on hearing demurrer or plea, 2370.

DEVISEE,

bill in the nature of a bill of revivor, against a devisee of a vendee, for a specific per-
formance of the agreement, 2071.

DISABILITY,

pleas of, 2095.
alien enemy, 2095.
infancy, 2096.
coverture, 2096.
lunacy, 2096.

DISCLAIMER,

general form of, 2113 n.
answer and, form of, 2113.

[The references are to the star paging.]

DISCOVERY,

- bill for, in aid of an action at law, 2045.
allegation in bill for, and prayer, 2047 and notes.
demurrer to, 2092.
plea to, 2107.
person filing bill for, must state the purpose, 2047 and n.
powers of courts of law to obtain, have rendered bill for, of rare occurrence, 2047 n.
decree for, and production of documents, 2353.
delivery out of, 2354.

DISMISS,

- petition for a plaintiff to dismiss his bill with costs, 2144.
notice of motion that plaintiff's bill may stand dismissed, 2130.

DISMISSAL,

- of bill without costs as to some defendants, 2333.
of bill for redemption on plaintiff's failure to pay amount found due on the mortgage, 2225.
of bill, at the hearing, 2355.
 as to part of the bill, 2356.
 with costs as to some defendants, and without costs as to others, 2356.
 where plaintiff does not appear, 2356.
 with costs, reasons stated, 2356.
 without prejudice, reasons stated, 2356.
 on case agreed, 2357.
 without prejudice to right to bring another suit, 2357.
 framed to prevent prejudice, 2358.
of petition with costs, 2188.

DISSOLVING OR CONTINUING,

- injunction on motion, 2325.
injunction continued at the hearing, 2325.

DISTRINGAS,

- petition to discharge distringas on stock, 2145.
affidavit to obtain writ of, on stock, 2164.

DOCUMENTS,

- prayer for, in bill, 1887.
interrogatory as to, 2082.
statement in answer, as to, 2114.
affidavit that plaintiff has not in his possession, to annex to bill, 2159.
affidavit as to production of, 2162.
summons for affidavit and production of, 2178.
summons for production of documents admitted by answer, 2179.
usual directions to produce, 2185.
mandatory injunction, for the return of, 2323.
order for production and discovery of, and deposit in court, 2353.
 inspection thereof out of court, 2354.
order for delivery out of, 2354.
 to party or purchaser, 2354.
 to party's solicitor, to be produced in evidence, 2354.

DOUBLE PLEADING, 2095 n.**DOWER,**

- bill for, and to set aside release made thereof for fraud and imposition, 1905.

EJECTMENT,

- prayer for injunction to restrain defendant from proceeding in an action of, 1961, 1963,
1964, 2005, 2006, 2054, 2055.
decree enjoining action of, 2271.

EQUITABLE MORTGAGES,

- decree for specific performance of agreement to execute a mortgage, 2216.
decree for absolute conveyance free from all equity of redemption, 2216.
like decree, with receiver, 2216.
decree declaring plaintiffs entitled to an equitable lien or mortgage; amount of debt,
principal, interest and costs; in default of payment, sale, 2217.

[The references are to the star paging.]

EQUITY,

demurrer for want of, 2086.
demurrer for want of, in bill of interpleader, 2090.

EQUITY OF REDEMPTION. (See REDEMPTION.)

decree for absolute conveyance free from, 2216.

EQUITY FOR A SETTLEMENT. (See SETTLEMENT.)

wife's principle of, 2001 n.
as to the property to which the right extends, 2001 n.
when it attaches, 2001 n.
as to the amount of proportion, 2001 n.
terms of provisions of settlement, 2001 n.
bill for settlement by *feme covert* and her children, 2000.

EQUITY RESERVED,

order on, after trial of issue, 2388.
after issue as to will in administration suit, 2388.
after issue as to clause in will, 2389.

EVIDENCE. (See TESTIMONY.)**EXCEPTIONS,**

to answer, form of, for insufficiency, 2124.
for scandal, 2124.
order on hearing of, when allowed, overruled, or some allowed and some overruled, 2369, 2370.
each exception should be confined to a distinct question, 2124 n.
to answers to interrogatories, each should adopt the language of the interrogatory, 2124 n.

EXECUTION,

bill to carry a decree into, 2072.
of decrees and orders,
substituted service of decree or order, 2364.
order of sequestration on return of attachment, 2364.
order to turn over to prison, 2364.
order for sequestration, corporation, 2365.
order for sheriff to return writ, 2366.

EXECUTORS. (See EXECUTORS AND TRUSTEES.)

bill by creditor against executors and devisees in trust, 1932.
amended bill of interpleader by, praying injunction against suits, and offering to bring fund into court, 2006.
bill by, in nature of interpleader, to advice and instructions of court, 2010.
bill against, by husband of deceased legatee, for payment of her legacy, 2012.
bill against, by infant legatees entitled to a sum of stock standing in name of the executors, praying for appointment of guardian, maintenance for past and future, &c., 2013.
prayer in bill against, and residuary legatees, the latter having raised a question of satisfaction, 2020.
plea to bill of revivor, that the defendant never was appointed executor in state where suit is sought to be revived, 2098, 2099.
direction to executor to pay mortgage out of general assets, 2199.
notice of motion to stay action brought against, after decree, 2126.
affidavit by, to obtain order to restrain action after decree, 2169.
taxation of costs as between solicitor and client, 2191.
as to charging with interest, 2061 n.
as a general rule should not carry on testator's trade, except for winding up, 2061 n.

EXECUTORS AND TRUSTEES. (See EXECUTORS, TRUSTEE.)

bill by widow against, claiming share of profits of special partnership as part of her income, 2015.
bill by, under a will to carry the trusts into execution, 2017.
decree against for account, 2294 and n.
for breach of trust, investment declared improper, 2295.
improper investment to be made good by instalments, 2295.
debentures fraudulently disposed of, to be deposited in court, 2295.
for inquiry as to wilful default by, 2296.
for inquiry as to trust funds under two settlements, 2296.
for inquiry whether executors have recovered moneys, 2297.
charging with interest, 2297.
for inquiry as to employment of balances, 2297.

[The references are to the star paging.]

EXECUTORS AND TRUSTEES — *continued.*

directing annual rents and compound interest, 2208.
costs and expenses, beyond costs of suit, 2298, 2299.
for inquiry as to costs, charges, and expenses, 2299.
for costs in suit to obtain instructions, as between solicitor and client,
charging it on different grounds, 2299.
appointing new trustees, 2300.

FAMILY COMPROMISE,

decree for specific performance of, 2200.
real estate and stocks, 2262-2264.
declaring plaintiffs entitled to specific performance of, and retaining bill for giving
relief, defendant being about to leave the United States, 2369.

FEME COVERT,

commencement of bill by, 1880.
bill to enforce payment of her bond out of her separate property, 1903.
bill by, and her children for a settlement against assignee of husband, 2000.
bill of revivor where *feme sole* has become covert, 2057.
statement in answer of, separated from her husband, 2113.
decree for sale of stock and payment to wife's separate use, 2285.
decree for payment to a divorced woman, 2285.
decree of inquiry, whether any proper settlement has been made for, if not, ordering
one, 2285.
decree settling share on, and after her decease for her children, &c., 2285, 2286.
decree ordering part maintenance of a married woman, insane, out of her separate
estate, 2286.
where abandoned by her husband, 2285 n.
assignment of dower to a woman after second marriage, out of estate left by first
husband, 2287.
decree for alimony on divorce from bed and board, 2289.
usual directions in decree for payment of interest to, for her separate use, 2187.
to husband in right of, 2187.
petition by, and husband, 2140.
petition by, that she may answer separate from her husband, 2141.
jurat, where *feme covert* answers separately from her husband, 2175.
(See EQUITY FOR A SETTLEMENT.)

FORECLOSURE,

bill of, by mortgagee against mortgagor, 1908.
by mortgagee against surviving mortgagor entitled as surviving devisees to
the equity of redemption, &c., 1910.
prayer in bill for foreclosure and sale, 1912.
modern English form of bill for, 1912.
form of bill for, prescribed in chancery rules of New Hampshire, 1918.
bill by an equitable mortgagee, by deposit, for foreclosure or sale, 1914.
bill by executors of mortgagee, for specific performance of agreement to take a trans-
fer; or for foreclosure or sale, 1916.
decree for, against mortgagor in possession, 2213.
decree for, mortgagee in possession; costs; repairs; improvements; rents and profits;
reconveyance; default; infant, 2213.
decree for absolute foreclosure against infant and *feme covert*, 2290.
direction in decree for, to ascertain damages, 2214.
directions for sale, in decree for, in default of payment, 2215.
decree for final foreclosure, 2215.

FOREIGN CORPORATION,

commencement of bill by, 1881.
bill against, and party having its funds that cannot be attached, 1938.

FORMAL PARTY,

prayer respecting, 2043.

FORMER,

decree, 2099.
suit pending, 2101.

INDEX TO APPENDIX OF FORMS.

2718

[The references are to the star paging.]

FRAUD,

statements in a bill to cancel a deed obtained by, 1965.
bill to annul a contract for, 1966.
bill by underwriters in respect of, practised upon them in the insurance of ships, 2032.

FRAUDS,

Statute of, answer insisting on benefit of, 2116, 2118.
if want of writing appears in bill, defendant may demur, 2103 n.

FRAUDULENT DEALINGS,

bills to have deeds, &c., delivered up to be cancelled on account of, 1965 *et seq.*
decree that release obtained by fraud be set aside, 2268.
purchase completed through fraud be set aside, 2268.
transfer of scrip shares set aside for fraud, 2269.
mortgage and judgments obtained by fraud declared invalid, 2270.
settlement by lunatic declared null and void, 2270.
conveyance in contemplation of insolvency set aside, 2270.
decree that party be estopped from asserting a legal title, when his doing so would work a fraud, 2271.
decree rescinding a contract on account of material misrepresentations, &c., 2272.
decree declaring a levy void for fraud, and injunction and release, 2273.
decree declaring void a levy on real estate of insolvent debtor, after first publication, 2274.
decree setting aside fraudulent conveyance, and not permitting it to stand for actual advances, there being an intent to defraud, 2274.
assignment of a judgment made with intent to defeat heir, declared void, 2277.
decree declaring void a deed obtained by imposition except as to actual advances and charges, 2278.
decree setting aside sale of testator's share in a partnership, by his executors for their personal benefit, 2279.
decree declaring void a direction in a devise of an estate for charitable purposes, 2280.

GENERAL AVERAGE LOSS,

bill for contribution, 1930.
decree for contribution, 2251.

GOODS AND CHATTELS,

pledged, decree for redemption of ; overpayment ; assignee, 2230, 2231 n.
bill to redeem goods pledged, 2231 n.
to recover surplus overpaid, 2231 n.
effect of payment or tender of amounts for which goods are pledged, 2231 n.
when may be redeemed, when no time limited, 2231 n.
sub-mortgaged by deposit, rights of original pledger, 2231 n.
bill to have goods deposited redelivered, 1924.

GUARDIAN,

of infant, order appointing, 2292.

GUARDIAN *AD LITEM*,

petition to assign, to an infant defendant, 2138.
for the appointment of a, by plaintiff, 2138.
affidavit to obtain an order assigning, to an infant defendant, 2161.
costs directed, 2299.
orders assigning, on application of infant or *non compos*, 2367, 2368.

HABEAS CORPUS,

petition of plaintiff for, to bring defendant in custody of sheriff to bar of court to answer his contempt, &c., 2141.

HEARING,

notice of motion for, 2133.
on bill and answer, 2133.

INDEMNITY,

in case of co-sureties, 2249, 2250.
against lost bill of exchange, 2268.
in case of lost mortgage deeds, 2267.
against mortgage, decreed, 2256.

[The references are to the star paging.]

INDORSEMENT,

on bill, 1914.

of solicitor's name and address, 1914.

INFANT — INFANTS,

commencement of bill by, 1880.

form of bill by, and mother, for a settlement, 2000.

bill on behalf of, legatees entitled to a sum of stock, praying to have guardian appointed, and maintenance past and to come, 2013.

demurrer to bill exhibited by infant, where no next friend is named, 2089.

plea of infancy to a bill exhibited without next friend, 2096.

commencement of answer by infant, 2109.

answer by infant, 2112.

answer of adults and infants, 2112.

decree or order *nisi* against, 2290, 2362, 2363.

absolute decree against, on coming of age, 2290.

decree for absolute foreclosure against, and *feme covert*, 2290.

declared not bound by decree, 2291.

directions as to shares and income ; advances and maintenance, 2291.

direction as to guardian and maintenance, 2292.

order for increase of maintenance to, 2292.

inquiry whether dissolution of partnership beneficial for, 2246.

whether for their benefit to take profits or interest, 2247.

custody of, committed to mother, provision for maintenance ; father excluded except &c., 2293.

order for *habeas corpus* to bring into court, 2293.

form of, 2293 n.

leave granted to take, out of jurisdiction, 2298.

plan of tuition and instruction to be transmitted, 2294.

order for maintenance of, out of jurisdiction, 2294 n.

affidavit to obtain order assigning guardian *ad litem* to, 2161.

born pending suit, effect of decree upon, 2059 n.

INFORMATION,

commencement in suit by, 1881, 1882.

forms of, 2076, 2078.

INJUNCTION,

prayers in bills for, 1885, 1888, 1941, 1943, 1946, 1948, 1963, 1965.

prayers for, against proceeding at law, 1961, 1963, 1964, 2005, 2032, 2054.

to restrain waste, 1964, 2036, 2037.

to restrain infringement of copyright, 1973.

to restrain infringement of patent, 1976, 2050.

to restrain use of trade-marks, 1987, 1992.

to restrain part of certain joint owners of a fund from transferring a certificate showing their right to it, 1994.

to restrain proceedings under an attachment of the property of an insolvent debtor in another state, 1995-1997.

to restrain sale of stock of deceased by administratrix, under a suggestion of her intention to leave the country, 1997.

in interpleader suit, 2001, 2006, 2010.

to restrain trustees from any further interference, upon application for new trustees, 2028.

to prevent the creation of a nuisance, where irreparable injury would ensue, 2088.

in an information, 2078.

demurrer to a bill for, to restrain a private nuisance, plaintiff not having established his right at law, 2091.

notice of motion for, to restrain proceedings at law, 2126.

notice of motion for, to restrain action against executor, 2126.

notice of motion for special, to restrain commission of waste, 2127.

notice of motion to dissolve, 2132.

petition to a justice for a temporary, 2146.

petition for an, 2146.

petition for an, and a receiver, 2147.

motion to modify an, 2149.

petition for an attachment for disobeying, 2149, 2150.

petition for an, forbidding the exercise of the right, &c., of certain offices, 2152.

affidavit of waste, to ground an injunction to stay it, 2165.

[The references are to the star paging.]

INJUNCTION — *continued.*

decree, that injunction formerly granted be continued, 2198.
decree for, against interference with property, ordered to be delivered to mortgagee, 2220, 2221.
decree for perpetual, against action at law, 2271.
decree for perpetual, not to set up title under a levy declared void, 2278.
decree for, on notice, or *ex parte*, on undertaking as to damage, 2303.
 ex parte interim order, 2303.
 ex parte, 2303, 2304.
inquiry as to damages, and costs in case of, 2304.
decree for, staying present and future action, 2304.
 leave to proceed with action, but execution stayed, 2305.
decree, final, for, after hearing in regard to damages, costs, fines, &c., for breach of, and warrant and attachment to secure payment, 2326.
 to stay sale and withdraw, 2305.
 to stay felling ornamental timber and other waste, 2305.
 the like, and trees to intercept view and other waste, 2306.
 the like, and trees to shade or shelter, 2306.
 and inquiry as to timber cut by life-tenant, &c., 2306.
to stay waste by tenants in common, 2307.
to stay pollution of stream, 2307 and n.
perpetual, after declaration of right to oyster-fishing and quieting in possession, 2308.
to stay diverting or restraining flow of water, 2308.
to stay raising a mill-dam, reduced under a decree, 2309.
injury preliminary to granting in the case of mill-dams, 2310, 2311.
to restrain the use of real estate in violation of a covenant, 2312.
to stay publishing newspaper, copyright, 2313.
to restrain partial infringement, copyright, 2313.
perpetual, upon printing, publishing, &c., 2313.
inquiry preliminary to, in reference to infringements, 2314.
to stay infringement of patent as to bricks, 2314.
 as to machinery, 2315.
preliminary inquiry and inspection as to, 2315.
to stay infringement, after verdict establishing patent, 2316.
perpetual validity of patent declared, &c., 2316.
to stay use of trade-marks, 2317, 2318.
perpetual, against shipping goods with plaintiff's trade-marks, 2318.
order for, against acting as partner, 2319.
 on dissolution of partnership, 2319.
 to restrain negotiating securities, 2319.
 to restrain transfers of stock, &c., 2320.
decree for, to restrain railway company from continuing in possession or entering on land, 2320.
 to stay defendant from preventing railway company replacing their rails and restoring railway, &c., 2320.
declaring the exclusive rights of a railroad corporation under its charter, and enjoining competing lines, 2321.
mandatory, to enforce return of documents, 2323.
 to restrain a town and its officers from paying out money for unauthorized purposes, 2323 and n.
writ of, to restrain agent of foreign debtor from transferring property of principal, &c., 2324.
dissolved or continued on motion, 2325.
continued at the hearing, 2325.
making perpetual at the hearing, 2325.
committal for breach of, 2325.
committal to secure appearance to answer for breach of, 2326.
order for an attachment, &c., for breach of an injunction, 2151.
sequestration for breach of, 2327.
in cases of interpleader, 2330, 2331.
 (See INTERPLEADER.)
bill sworn to, leave to amend on petition praying, &c., 2368.
to what county writ of, returnable in Maine, 2150 n.

INQUIRIES,

usual directions as to, 2185.

as to persons entitled, under gift to heirs, by the laws of their domicile, 2198.

[The references are to the star paging.]

INQUIRIES — continued.

- as to the exercise of power to appoint, 2205.
- as to charities and their treasures, 2206.
- as to charities and lands in mortmain, 2206.
- as to the value, income, &c., of property of a charity, 2207.
- as to damages in a case of foreclosure, 2214.
- as to brickmaking on mortgaged premises, 2224.
- as to existence of partnership, 2237.
- as to the property, estates, &c., of a partnership, 2239.
- as to dealings with surviving partners; as to sums of money paid by them; and whether estate of deceased partner was released, &c., 2239.
- as to testator's partnership business, 2241.
- as to co-partnership debts and assets, 2243–2245.
- whether dissolution of partnership beneficial for infants, 2246.
- whether for benefit of infant to take profits of interest, 2247.
- as to sales between part-owners of ships, 2247.
- whether co-sureties can contribute, 2249.
- as to title at the hearing; specific performance, 2254.
- whether part, to which title shown, material, 2257.
- similar inquiry, without prejudice, 2257.
- whether leases tendered for execution are proper, 2259 and n.
- whether any settlement on married woman and children, and if proper, 2285.
- in case of assignment of dower, when lands, &c., were alienated, as to present value of the lands, &c., damages for detention, yearly amount and value of the rents, &c., 2287, 2288.
- as to advance to infants, maintenance, and shares, 2291.
- as to ability of father to maintain infant, 2292 n.
- as to payment of infant's maintenance to father, and to mother, 2292 n.
- as to wilful default, 2296.
- as to trust funds, 2296.
- whether executors have recovered moneys, 2297.
- as to employment of balances by executors and trustees, 2297.
- as to costs, charges, and expenses relating to administration, 2299.
- as to damages in case of injunction, 2804.
- as to timber cut, &c., 2306.
- as to obstruction to the flow of water by a mill-dam, extent to be lowered, effect of lowering, &c., 2310.
- how much to be lowered in order to remove the nuisance to the plaintiffs, 2311, 2312.
- as to infringement of copyright, 2314.

INSOLVENCY,

- decree appointing receiver, during pendency of proceedings for a warrant, 2347.
- order for authority of receiver in, to compromise notes and accounts, 2349.
- for acceptance and approval of receiver's accounts in such case, 2349.

INSPECTION,

- of documents, order for, 2354.
- in case of patents, 2315.

INSUFFICIENCY,

- exceptions to answer for, 2124.

(See EXCEPTIONS.)

INTEREST,

- charging executors and trustees with, 2297, 2298.
- directions for annual rests and compound interest, 2298.
- want of, in plaintiff, plea of, 2097.
- want of, in the defendant, plea of, 2098.

INTERIM ORDER,

- ex parte*, 2303.

INTERPLEADER,

- bill to settle and adjust claims to money due under a bond or obligation, 2001.

offer to pay money into court, 2001 n.

- affidavit of non-collusion to be annexed to, 2003, 2004, 2158.

- prayer in bill of, by an insurance company, 2003.

affidavit of officer of public company to be annexed to 2004, 2158.

- statements in bill of, by purchaser against different persons, claiming the purchase-money, 2004.

- prayer that defendants may interplead, &c., 2005.

[The references are to the star paging.]

INTERPLEADER — continued.

amended bill of, by an executor, praying injunction, and offering to bring fund into court, 2006.

bill by executor in the nature of, asking advice of court, 2010.

demurrer to a bill of, for want of affidavit of non-collusion and of equity, 2090.

demurrer to bill of, because showing no claim of right in defendant, 2090.

decree for injunction, staying proceedings on motion upon payment into court, 2330.

on undertaking as to subject-matter, 2331.

in favor of bank, 2331.

direction to interplead ; payment of costs, 2332.

action stayed as to policy money ; inquiry who entitled, in interpleader suit, 2332.

declaring the persons entitled ; costs to be paid out of fund ; balance to those entitled ; bill dismissed without costs as to other defendants, 2333.

INTERPRETER,

usually notary public, 2175 n.

desirable, but not essential that he should sign answer, 2175 n.

residence and addition how and when to be stated in jurat, 2175 n.

forms, where one is employed, 2175, 2176.

INTERROGATING PART OF BILL, 1884 and notes.

none in modern English form of bill, 1884 n.

rule respecting in Circuit Courts of United States, 1884 n., 1956, 1957.

general interrogatory, 1884 n.

may be omitted, where, 1884 n.

INTERROGATORIES,

none allowed in bill in English practice, 2081.

modern English form of, filed separately from bill, 2081.

as to a deed, 2082.

as to documents, 2082.

as to personal estate, 2082.

in bill by purchaser against vendor for specific performance, 2083.

specific, may be proposed in bill, in Massachusetts, 1884 n.

rule respecting, in United States Circuit Courts, 1884 n.

particular, defendant objecting to answer, 2114.

affidavit of delivery of, 2160.

summons for further time to answer, 2177.

INTERROGATORY,

general, bill must conclude with, in Massachusetts, 1884 n.

sufficient, and none other to be introduced into bill, in Maine, 1884 n.

INTRODUCTORY,

part of a decree, 2181.

in United States Circuit Court, 2182.

of order in cause coming on for further consideration, 2182.

words preceding an answer, 2110.

INVESTMENT,

prayer in bill for, 2020.

by trustee, decree declaring improper, 2295.

improper, decree ordering to be made good by instalments, 2295.

account decreed respecting, 2296, 2297.

by receivers, 2344.

IRREPARABLE INJURY,

bill to restrain, 2038.

trespass, where it causes, 1941.

ISSUES,

to what extent party has right to 2334 n.

when to be called for, 2334 n.

order for, as to amount of damages and compensation, directions as to court and term ; form of issue, &c., 2334.

order for separate, as to shares, in each of two lots of land, plaintiff to aver his number, and defendant to traverse ; restriction on traverse, 2335.

order for, on question of fraud, 2335.

as to the existence of a partnership, 2335 n.

with directions as to the evidence, 2336.

devisavit vel non, modern English form, 2336.

as to clause in will, 2336.

as to validity of bond, 2336.

[The references are to the star paging.]

ISSUES — *continued.*

- as to sanity, and validity of deed, fraud. 2387.
- as to damages, 2387.
- as to right of way, 2387.
- directions after issues awarded, 2387.
- form of verdict indorsed on record, 2387.
- another form for same, 2388.
- order for new trial of, 2388.
- order on equity reserved after trial of, 2388.
 - after issue as to will in administration suit, 2388.
 - after issue as to clause in will, 2389.
- notice of motion for, 2182.

JOINING ISSUE,

on the answer, 2128 n.

JOINT ACCOUNT,

real estate declared purchased on, 2252.

JURAT,

- to bill or answer or affidavit, 2171.
- to answer of a foreigner, 2171.
- of interpreter to be annexed to answer, 2171.
- to answer of a corporation, 2172.
- English forms of, 2172.
 - sworn at Record and Writ Clerk's office, 2172.
 - before a London commissioner, 2172.
 - if in the country, 2172.
 - ordinary form of, one defendant, 2172.
 - the like, two or more defendants, 2173.
 - where guardian of infant swears to answer, 2173.
 - where defendant or deponent cannot write, 2173.
 - where married woman answers separately from husband, 2175.
 - where witness reads answer or affidavit to a marksman, 2173.
 - where officer reads answer or affidavit to a blind defendant or deponent, 2174.
 - where witness reads same to same, 2174.
 - where defendant or deponent is deaf and dumb, 2175.
 - foreigner, in English, through interpreter, 2175.
 - in foreign language, oath interpreted, 2175.
 - Hindoo, interpreted to him in English, 2176.
 - to translation, 2176.
 - translation of foreign, should be filed with original, 2176 n.

JURISDICTION,

- statement in bill when defendant out of, 2042.
- statement that defendant out of, as reason for not making him party to bill, and prayer for answer by, if he comes within, 2026.
- clause, in bill, when may be omitted, 1883 n.
 - now obsolete in England, 1883 n.
- leave to take infant out of, 2293.
- order for maintenance of infant out of, 2294 n.
- defendant out of, served with bill, must also be served with subsequent proceedings, as if he were within, 2042 n.
- defendant returning within, leave to enter appearance, 2367.
- order for service of bill on defendant out of, 2371.
- order for plaintiff to be at liberty to appear for defendant served with bill out of, 2371.
- order to take bill *pro confesso*, defendant being out of, 2372.

LAW,

- demurrer, plaintiff, not having established his right at, 2001.
- notice of motion for injunction to stay proceedings at, 2126.
 - for an issue at, 2182.
- prayers for injunction against proceedings at, 1961, 1963, 1964, 2005, 2054, 2055.
- decree for injunction, staying present and future action at, 2304.

[The references are to the star paging.]

LEGACIES,

bill for the payment of, 2012.
decree directing administrator *de bonis non* how to appropriate residue in payment of,
2203.

LEGATEE,

unsatisfied, demurrer to a bill by, against a debtor of his testator, for want of privity,
2091.

LEVY,

decrees declaring, void, 2273, 2274.

LIENS,

decree declaring, on reversion, 2217.
on costs in another suit declared, 2218.
decree, declaring lien on an estate for the increased value by improvements made by a
bona fide purchaser, without notice, interlocutory, 2218.
final, 2219.

decree for relief to one who has paid off a tax, being a lien, 2220.

LIMITATIONS,

plea of statute of, 2103.
statement in an answer by mortgagees raising the defence of, 2115.
another form, 2116.

LOST BILLS OF EXCHANGE. (See INDEMNITY.)**LOST BOND,**

demurrer for want of affidavit of loss, 2090.

LOST MORTGAGE DEEDS. (See INDEMNITY.)**LUNATIC,**

commencement of bill by, 1880.
plea of lunacy, 2096.
commencement of answer by, 2109.
answer of, and his committee, 2112.
devise of maintenance of, out of profits, insufficient, sale ordered, 2292.

MAINTENANCE,

of infants, 2292-2294 and notes.

(See INFANT. INFANTS.)

of married woman, out of her own property, where she was abandoned by her
husband, &c., 2285 and n.
where she was insane, 2286.

of lunatics, 2292.

MANDAMUS,

demurrer to a bill for relief against a, 2091.

MANDATORY,

injunction for the return of documents, 2823.

MARRIED WOMEN. (See FEME COVERT. EQUITY FOR A SETTLEMENT.)**MASTER,**

usual directions for reference to, 2185.
where account directed, 2185.
accounts and inquiries, 2185.
liberty to state special circumstances, 2186.
to make separate report, 2186.
to settle conveyances, 2186.
reference to, to state account, 2193, 2195, 2196.
report on a bill for redemption, 2231-2235.

MILL-DAM,

decree for abating and reducing; and inquiries, 2309, 2311.

MINUTES OF DECREE,

notice of motion to settle, 2131.

MISTAKE,

in deed, bill to correct, 1972.
the mistake must be made out according to the understanding of both parties, 1973 n.
in entering a discharge of a mortgage in the registry of deeds, 2280.

MONEY,

to be paid into court to the credit of the cause, 2863.

[The references are to the star pages.]

MORTGAGE AND MORTGAGEE. (See FORECLOSURE. REDEMPTION.)

form of bill by mortgagee to foreclose, 1908.

against surviving mortgagor, entitled as surviving devise to the equity of redemption, 1910.

modern English form of bill for foreclosure, 1912.

form of bill for foreclosure in New Hampshire, 1913.

prayer in bill for foreclosure and sale, 1912.

bill by equitable mortgagee, by deposit, for foreclosure or sale, 1914.

executors of mortgagee, for specific performance of agreement to take a transfer; or for foreclosure or sale, 1916.

decrees for foreclosure, 2213.

(See FORECLOSURE.)

bills for redemption, 1918.

(See REDEMPTION.)

decrees for redemption, 2221.

(See REDEMPTION.)

equitable, 2216.

(See EQUITABLE MORTGAGES.)

decree for delivery of mortgaged premises or property to mortgagees, 2220.

order to pay off from fund in court, 2361.

from proceeds of sales, 2362.

order to release or cancel mortgage, 2363.

MORTGAGED PROPERTY,

decree delivering possession of, to mortgagees, 2220.

MOTION. (See PETITIONS AND MOTIONS. NOTICE OF MOTIONS.)

to modify an injunction, with qualified allowance, 2149.

MULTIFARIOUSNESS,

form of demurrer for, 2086.

MUNICIPAL CORPORATION,

commencement of bill by, 1881.

NE EXEAT REGNO,

prayer for, in bill, 1886, 1888, 1897.

affidavit to obtain a, 2163, and n., 2164.

order for writ to issue, 2328.

writ discharged on defendant's giving security, 2329.

order for examination of defendant, as poor debtor, 2329.

discharge of; inquiry as to damages and payment according to undertaking, 2330.

notice of motion for discharge of the writ, 2329.

NEGOTIATING SECURITIES,

injunction to restrain, 2819.

NEW TRIAL,

of issue, order for, 2388.

NOTICE OF MOTIONS. (See TABLE OF CONTENTS to this volume.)

when necessary in case of injunctions, 2126 n.

NUISANCE,

bill to prevent the creation of, 2038.

demurrer to a bill to restrain a private, the plaintiff not having established his right at law, 2091.

order for injunction to stay pollution of stream, 2307.

decree for abating and reducing mill-dam which caused water to flow back on mills above, 2309.

another decree in like case, 2311.

NUNC PRO TUNC,

petition to enter decree, 2144.

leave to enter, 2358.

OATH. (See JURAT AND ANSWER.)

waiver of, 1885.

OBJECTIONS,

to draft of Master's report, 2234.

{The references are to the star paging.)

ORDERS. (See DECREES AND ORDERS.)

for increase of infant's maintenance, 2292.
 for custody of infant's, 2293.
 for *habeas corpus* to bring infant into court, 2293.
 for leave to take infant out of jurisdiction, 2293.
 share of wife settled by, without deed, 2295.
 for injunction. (See INJUNCTION.)
 execution of, 2364.

(See EXECUTION.)

to pay off incumbrances, 2361, 2363.
 to pay money into court to credit of cause, 2363.
 for leave to attend, 2368, 2369.

(See AMEND.)

PAINS,

and penalties, demurrer where a bill will subject a defendant to, 2092.

PARISH REGISTRY,

affidavit verifying, 2166.

PARTIES,

if absent, are necessary for any part of the relief prayed by the bill, it is an objection
 on demurrer, 2089 n.
 demurrer for want of, 2089.
 plea for want of, 2106.

PARTITION,

bill for, 2027.
 decree for, at the hearing, 2254.

PARTNERSHIP,

bill by one partner against another in business of carpenters, &c., praying account,
 injunction, and receiver, 1943.

bill for dissolution of, between auctioneers and for injunction, 1948.

prayer in bill seeking an account of partnership dealings, receiver and injunction.
 Modern English form, 1948.

prayer in bill filed after dissolution of, praying account, &c., 1949.

bill by surviving partner, against administrator widow and heirs of deceased partner,
 claiming certain real estate as partnership property, 1950.

decrees as to, enforcing partnership agreement with variations, 2235.

setting aside partnership induced by misrepresentation, 2236.

holding partnership still existing, and ordering sale as a going concern,
 2237.

declaring the existence of, 2237 and n.

decree for account of dealings and transactions, 2237.

declaring house where business carried on, partnership assets, sale, &c., 2237.

decree for dissolution from time of notice ; renewed lease partnership assets ; accounts
 and inquiries, 2238.for account of assets of, on creditor's bill ; one partner deceased, survivors bank-
 rupt ; inquiry, 2239.against administrators of deceased partner, and surviving partner,
 2239.

accounts and inquiries as to testator's partnership business, 2241.

decree requiring surviving partner who has retained and employed capital stock of the
 firm, to account for the profits, 2242.decree declaring estates purchased with partnership funds to be partnership property,
 &c., 2243.

another form declaring partnership realty to be deemed personality, 2246.

inquiry whether dissolution beneficial to infants, 2246.

infants declared entitled to profits against survivor ; inquiry, whether for their bene-
 fit to take profits or interest, 2247.

order for injunction against acting as partner, 2319 and n.

injunction on dissolution of, 2319.

receiver and manager of partnership business, 2346.

real estate declared purchased on joint account, 2252.

decree for sale of real estate held as partnership property, and disposition of proceeds,
 2362.

order for payment of debts of, and co-partnership balance to surviving partner, 2362.

[The references are to the star paging.]

PART-OWNERS,

- of ships and cargoes, decree for account, 2247.
- inquiry as to sale between part-owners, 2247.
- decree for general account, 2248.
- accounts of shares and earnings, and proceeds if sold, 2248.
- decree for account of freight and earnings, 2248.

of real estate, interlocutory decree, declaring purchase of real estate to be on joint account of plaintiff and defendant and not on sole account of defendant, 2252.

PART-PERFORMANCE OF AGREEMENT. (See SPECIFIC PERFORMANCE.)

PATENTS,

- bill to restrain infringement of, setting out recoveries at law and in equity, 1976.
- another form of bill, &c., 1978.
- supplemental bill in a patent cause, 2049.
- another form of supplemental bill, &c., 2050.
- decree staying infringing patent as to bricks, 2814.
- staying infringing as to machinery, 2815.
- order that motion stand over, with leave to bring action and direction for inspection, &c., 2315.
- decree staying infringements, after verdict establishing patent, 2316.
- declaration of validity of patent ; infringement, account ; perpetual injunction, 2316.

PENDENCY,

- of former suit for same matters, plea of, 2101.

PERFORMANCE.

- specific. (See SPECIFIC PERFORMANCE.)

PERPETUAL. (See INJUNCTION.)

PERSONAL ESTATE,

- interrogatory as to, 2082.

PETITIONS AND MOTIONS,

- petition to take answer of defendant without oath, 2134.
- to amend bill, 2134, 2135.
- to amend bill after answer, &c., 2135.
- by adding a defendant, 2136.
- of course for leave to amend answer by consent, 2136.
- to file supplemental answer by consent, 2136.
- of plaintiff, to sue in *forma pauperis*, 2137.
- of defendant, to defend in *forma pauperis*, 2137.
- to assign a guardian *ad litem* to infant defendant, 2138.
- to appoint guardian *ad litem* on petition of plaintiff, 2138.
- to be admitted to prosecute, by an administrator, 2139.
- for notice to administrator to appear and defend, 2139.
- for leave to make new parties upon decease of any, 2139.
- by husband and wife, 2140.
- of course, by infant coming of age, to dismiss bill with costs, before decree, 2140.
- for discharge of defendant out of custody of sheriff or messenger, 2140.
- to withdraw plea or demurrer, 2141.
- that *feme covert* may answer separate from her husband, 2141.
- for *habeas corpus*, 2142.
- to use depositions in cross-cause, 2142.
- to enlarge time to answer in cross-suit, 2142.
- to stay proceedings in original suit till answer to cross-bill, 2142.
- to change solicitor, 2143.
- to prove exhibits, 2143.
- to dismiss bill, 2144.
- to enter decree *nunc pro tunc*, 2144.
- special, to rectify decree or order, 2144.
- to discharge *distringas*, 2145.
- for solicitor to deliver his bill of costs, 2145.
- for leave to withdraw replication and amend, 2146.
- to justice for temporary injunction, 2146.
- for an injunction, 2146.
- for injunction and receiver, 2147.
- for allowance out of property in hands of receiver, 2148.
- to modify an injunction, with qualified allowance by court, 2149.
- for an attachment for disobeying an injunction, 2149, 2150.

[The references are to the star paging.]

PETITIONS AND MOTIONS — *continued.*

- for leave to file bill of review, on discovery of new facts, 2152.
- for leave to file an information, 2152.
- for transfer of fund, 2154.
- of rehearing and appeals, 2155, 2156 n.
- for discharge of trustee and transfer of property to new trustee, 2031.
- dismissed, with costs, 2188.

PLEAS,

- title and commencement of, 681, 2094 and n.
- conclusion of, 2094.
- to part, and answer as to residue, 2094.
- and demurrer to residue, 2094 n., 2095 n.
- to the person,
 - alien enemy, 2095.
 - infancy, to bill exhibited without *prochein ami*, 2096.
 - coverture of plaintiff, 2096.
 - lunacy, 2096.
- that plaintiff is not the person he pretends to be; that alleged intestate is living, or
 - that plaintiff is not administrator as alleged, 2097.
- that defendant has no interest in the subject of suit, 2098.
- that defendant is not administrator, 2098.
- in bar,
 - a decree, as of record in a Court of Equity, 2099.
 - former suit depending, 2101.
 - stated account, 2101.
 - release, 2102.
 - will, 2103.
 - statute of limitations, 2103.
 - purchase for valuable consideration, without notice, 2104, 2106.
 - want of proper parties, 2106.
 - that discovery would betray confidence in an attorney, 2107.
 - to a bill of revivor, 2108.
 - to a supplemental bill, 2108.
 - stated account and release, 2095 n.
 - adverse possession, 2095 n.
 - of the statute of limitations, 2095 n.
 - of purchase for valuable consideration, 2095 n.
 - supported by answer, 2095 n.
 - double pleading, 2095 n.
 - order on hearing plea or demurrer, 2370.

POSSESSION,

- decree delivering, to mortgagees, 2220.

PRAYER,

- for relief, general, 1885.

- rule as to in United States courts, 1885 n.
 - in New Hampshire, 1885 n.
 - in England, 1885 n.
- special, for answer, oath waived, 1885.
 - for injunction, 1885, 1888.
 - to restrain proceedings at law, 1885.
 - for declaration of trust, 1885.
 - for *ne exeat*, 1886, 1888.
 - for an account of rents, profits, &c., 1886.
 - for production of deeds, 1887.
 - for *subpæna*, ordinary, 1887.
 - practice in England, and New Hampshire, 1887 n.
 - what shall contain in United States courts, 1887 n.
 - when government defendant, 1887.

- for injunction and *subpæna*, 1888.
- for *ne exeat* and *subpæna*, 1888.

- in a bill for specific performance of parol agreement, plaintiff relying on part performance, 1895.

- in a bill by a surety, for specific performance, &c., 1897.

- in a bill for foreclosure and sale, 1912.

- in a bill seeking account of partnership dealings, &c., 1948.

- in a bill filed after dissolution of partnership, &c., 1949.

- in a bill to rectify settlement and remove trustees, 1970.

[The references are to the star paging.]

PRISON,

order to turn party over to, when brought up by attachment, 2864.

PRIVITY,

demurrer for want of, 2091.

PRO CONFESSO,

decrees, where defendant does not appear at the hearing, 2355.

where defendant appears and waives objections, 2355.

affidavit that no answer has been filed as a foundation for a decree *pro confesso*, 2163.

order to take bill, defendant being out of jurisdiction, 2372.

PRODUCTION OF DOCUMENTS. (See DOCUMENTS.)**PROTESTATION,**

in demurrers, 2085.

in pleas, 2094.

PURCHASER,

bona fide, without notice, plea of, 2104, 2105.

decree declaring a party to be a, *bona fide* and without notice, 2252; not to be, 2229.

with notice of plaintiff's right; outlines of decree declaring plaintiff entitled to redeem against, 2228.

QUIA TIMET,

form of bill, 2040.

extent and nature of jurisdiction, 1961 n., 2040 n.

RAILROAD COMPANY,

commencement of bill by, 1881.

decree declaring exclusive rights of a railroad corporation, and enjoining competing lines, 2321.

RAILWAYS,

injunction to restrain, from continuing in possession or entering on land, 2320.

declaration of right to use; rents; damage; compensation for occupying land not authorized to be taken, 2320.

injunction upon railway company, 2320.

RECEIVERS,

prayer for in bill, 1946, 1948, 2020, 2028, 2030.

petition for, pending question in insolvency, 2147.

order for appointment of, of real and personal estate, 2339.

order on, to give sheriff statement of property he claims, 2344.

order on, to keep separate accounts of rents and personality; investment, 2344.

continued at hearing; keep down interest; pass his accounts, and pay balances, 2344.

order on, to repair buildings, 2344.

order on, to bring in account, 2345.

order to put his recognizance in suit, 2345.

discharge of; pass accounts, pay balance; recognizance vacated, 2345.

and manager of testator's business, 2345.

order on, to pay off and keep down charges, 2346.

appointment of, and manager of partnership business, and premises, 2346.

the like, pending petition to annul proceedings under one petition in insolvency, and to obtain order to issue a warrant on another, 2347.

at the instance of a solvent partner, 1948 n.

order on request by, for authority to compromise notes and accounts, 2349.

order of acceptance and approval of receiver's account, 2349.

order for appointment of receiver, in a suit by a creditor against a foreign insurance company and their agent in Massachusetts, &c., 2350.

order discharging, 2351.

order of reference to Master to report compensation of, and balance remaining in his hands, 2352.

order on, to pay out of funds in his hands the taxable costs, and the balance to plaintiff, 2352.

appointment of, and manager abroad, 2353.

notice of motion for the appointment of, 2127.

to pass accounts, proper allowance for, 2277.

affidavit verifying receiver's account, 2170.

summons to proceed with receiver's accounts, 2180.

to discharge receiver and vacate recognizance, 2179.

may be appointed to collect personal estate in a foreign country, to get in rents, to sell real estate there, and receive the produce, 2127 n.

[The references are to the star paging.]

RECEIVERS — continued.

may be appointed *after* a decree for sale, 2127 n.
allowance, motion for by defendant, out of property in hands of, 2148.
recognition by, and his sureties, 2340, 2341.
or bond, 2342.
of a receiver of banking corporation, 2343.

RECOGNIZANCE, 2340, 2341, 2343.

of receiver, order to put in suit, 2345.
vacated, 2345.

RECTIFY,

settlement and remove trustees, charge and prayer in bill for, 1970.
(See REFORM.)

REDEMPTION OF MORTGAGES,

bills for, 1914, 1918.
by purchaser of an equity of, 1920.
by heir of mortgagor, alleging possession, receipt of rents and profits, waste,
occupation rent, 1918, 1925.
of goods, 1924.
statements in bill by assignee of mortgagor against mortgagee, under an absolute deed,
who went into possession and sold to a *bona fide* purchaser, 1923.
decree for redemption and account against mortgagee in possession, 2221, 2222 n.
occupation rent, 2223 n.
repairs and lasting improvements, 2223 n.
rests, 2223.
deterioration, 2223.
strip and waste, 2223.
inquiry as to brickmaking on the premises, 2224.
account of insurance premiums, 2224.

common form of decree for reference on a bill to redeem against mortgagee in posses-
sion, 2224.

other forms for the same, 2224, 2225.

dismissal of bill for, on plaintiff's failure to pay amount found due, 2225.

decree for surrender of mortgaged premises on payment of amount found due upon the
mortgage; in default of payment, bill dismissed and redemption barred, 2226.

decree declaring an instrument in writing a mortgage, subject to redemption, 2226.

decree for, where absolute deed was shown to be a mortgage by parol evidence, 2227.

decree declaring an absolute deed to be a mortgage; and absolute sale by the
mortgagee without notice a constructive fraud, 2227.

after tender, 2229.

of goods pledged, overpayment, 2230.

bill to redeem goods pledged, 2231 n.

to recover surplus overpaid, 2231 n.

if no time for, limited, pledgor may redeem at any time during his life, 2231 n.

original pledgor entitled to, of goods, where pledgee had submortgaged by deposit, on
paying the amount due on the original pledge, 2231 n.

outlines of a decree, declaring plaintiffs entitled to redeem against purchaser with
notice of plaintiffs' right, and reference for account, 2228, 2229.

to authorize a recovery for waste on a decree for redemption it should be charged in
bill, 2229 n.

decree, upon bill to redeem, should fix the time for, 2222 n.

time to be fixed is within discretion of court, 2222 n.

to charge a mortgagee in possession for occupation rent on bill for, mortgagor should
allege and show that he actually occupied, 2223 n.

costs, and taxation thereof on bill for, 2189.

form of Master's report on a bill for redemption. 2231-2235.

of objections to the draft report, 2234.

REFORM,

bill for, of conveyance, 1971.

of policy of insurance, allegations in bill for, 1966.

(See RECTIFY.)

decree for, of conveyance, 1972.

REHEARING,

petition for, 2155.

certificate of counsel, 2156 n.

RELATOR,

in information, commencement of bill by, 1882.

[The references are to the star paging.]

RELATOR — *continued*.

- form of information by relator, 2076, 2078.
- extra costs of suit out of charity fund, 2212.
- order to tax Attorney-General's costs separately from, 2212.

RELEASE,

- to set aside release of dower, 1905.
- conclusion of plea of, 2102.
- plea of stated account and release, 2095 n.

RELIEF,

- prayer for, in bill, 1885.
- general and special, 1885.
- rule of United States courts as to, 1885 n.
- special and general in conclusion of bill, 1885 n.

REPLICATION,

- and joining issue, 2128 n.
- order for leave to withdraw, and amend, 2369.

REPORT,

- of Master, form of, on bill for redemption, 2231 ; objections to draft of, 2234.

REPRESENTATIVE,

- notice of application for, *ad litem*, of a deceased person, 2127.
- order to carry on proceedings without a, 2360.
- order appointing plaintiff to represent deceased plaintiffs, 2360.

RESCIND,

- decree to, contract for purchase and sale of timber land, on account of material misrepresentations, 2272.

RESERVED,

- further consideration, 2202.
- interest, 2186.
- costs, 2186.
- further directions, 2186.

RESTS,

- annual and compound interest directed, 2298.
- in account by mortgagee, 2223.

REVIEW,

- bills of, 2064.
 - for error of law apparent, 2064.
 - on discovery of new matter, 2065.
- bill in the nature of a bill of, 2067.
- demurrer to bill of, and supplemental bill, on ground that there are no errors in decree, and that leave of court was not first obtained, 2092.
- petition for leave to file, on discovery of new facts, 2152.
- affidavit of having discovered new matter for bill of, 2169.

REVIVOR. (See REVIVOR AND SUPPLEMENT.)

- bills of, 2056.
 - on marriage of female plaintiff, 2057.
- plea to bill of, 2108.

REVIVOR AND SUPPLEMENT. (See REVIVOR, SUPPLEMENT.)

- bills of, 2858, 2060, 2062.
- order to revive, 2358.
 - on marriage of female sole plaintiff, 2359 n.
- order that suit be carried on against assignees, 2359.
 - by committee or guardian of plaintiff, a lunatic, before decree, 2359
- decree on supplemental bill to carry on proceedings, 2359.
- on supplemental bill in nature of bill of revivor, though original decree was made after suit abated, 2360.

RIGHT,

- demurrer to a bill to restrain private nuisance, because right not established at law, 2091.
- to interpleader bill, because it shows no claim of, in defendant, 2090.

RULES,

- of practice for the courts of equity of the United States, 2375-2399.
 - preliminary regulations, 2375.
 - process, 2377.
 - service of process, 2378.
 - appearance, 2379.

[The references are to the star paging.]

RULES — continued.

- bills taken *pro confesso*, 2379.
- frame of bills, 2380.
- scandal and impertinence in bills, 2381.
- amendment of bills, 2382.
- demurrers and pleas, 2383.
- answers, 2384, 2389.
- parties to bills, 2386.
- nominal parties to bills, 2387.
- bills of revivor and supplemental bills, 2388.
- oath to answer, 2389.
- amendment of answers, 2389.
- exceptions to answers, 2389.
- replication and issue, 2390.
- testimony, how taken, 2391–2393.
- testimony, *de bene esse*, 2393.
- form of the last interrogatory, 2393.
- cross-bill, 2393.
- reference to, and proceedings before Masters, 2393–2396.
- exceptions to report of Master, 2396.
- decrees, 2396.
- guardians and *prochein amis*, 2397.
- decree upon foreclosure of mortgage and sale and balance still due, 2398.
- respecting practice in Supreme Court of United States, 2398, 2399.

SALE,

- form of order for sale of partnership property, 2237, 2238 ; and for a receiver, 1948 n.
- partnership real estate, 2362 ; and directions as to mode of sale, and disposition of proceeds, 2362.
- ordered for maintenance of lunatic, 2292.
- ordered in default of payment of amount of what found due on mortgage 2215, 2363.
- ordered on default of payment of what shall be found due on mortgage by deposit, 2217.
- of partnership property, 2237, 2238.
- inquiries as to, between part-owners, 2247.
- by order or decree, in insolvency proceedings, 2361.
- order to pay proceeds of, in discharge of incumbrances, 2361.

SATISFACTION,

- prayer in bill where question raised as to, 2020.

SCANDAL,

- exceptions for, 2124.
- memorandum that it has been expunged; 2125 and n.

SCHEME,

- bill for, substance of, 2207 n.
- decree for, new trustees, inquiry, &c., 2207.
- directions for, 2207.
- another form, 2207.
- reference to Master to report a, 2208, 2209.
- order approving, 2208.
- extract from, 2211.

SECRETARY,

- of public company, affidavit to bill of interpleader, 2003 n., 2004.

SECURITY,

- deed to stand as, for advances, &c., 2278 and n.
- not to stand as, 2274.

SEPARATE ESTATE,

- of a married woman, bill for payment of her debt out of, 1903.

SEQESTRATION,

- order for, for breach of injunction, 2327.
- order for, on return of attachment, 2364.
- order for ; corporation, 2365.
- writ of, 2365.

[The references are to the star paging.]

SERVICE,

personal, of bill, affidavit of, 2160.
of amended bill on solicitor of defendant affidavit of, 2160.
substituted, of decree or order, 2364.
order for service of bill on defendant out of jurisdiction, 2371.

SETTLEMENT,

bill by married woman and her children, for, 2000.
charges and prayer in bill to rectify, 1970.

(See EQUITY FOR A SETTLEMENT.)

SHAREHOLDER,

in company, commencement of bill by, 1881.
creditors' bill against corporation and shareholders, 1935.

SHIP,

demurrer to bill respecting, 2087.
accounts as to, 2247.
decree for general account as to, 2248.
accounts of shares and earnings, and proceeds, if sold, 2248.
decree for account of freight and earnings, 2248.

SOLICITOR,

note of, and residence ; on bill, 1914.
plea that discovery would betray confidence as a, 2187.
answer that letters, &c., called for, contained confidential communications between,
and defendant, 2114.
petition for a, to deliver his bill of costs, to be taxed, 2145.
petition to change, 2143.
order nisi to strike off the roll for misconduct, 2302.
order absolute to strike off, cause not shown or disallowed, 2302.
taxation of costs and payment to, 2191.
costs as between, and client, 2191.

SPECIAL CASE,

declaratory decree on, 2183.

SPECIFIC PERFORMANCE, 1889 n., 1889-1902.

bill for, by vendor against vendee, 1889.
 by lessee against lessor, 1893.
 against administrator, &c., 1894.
 comprehensive form to enforce sale or purchase of real or personal estate,
 shares in a corporation, &c., 1902.
 of agreement for purchase, modern English form, 1890.
charge in bill by purchaser against vendor, 1891.
 of purchase-money remaining unproductive, 1891.
charge in bill by first vendee against vendor and subsequent purchaser from him, 1892.
allegations and prayer in bill for, on parol agreement and part performance, 1895.
of an agreement to make a policy of insurance, 1897.
of agreement to transfer shares in a corporation, 1902 n.
decree for, on a bill by vendor to enforce sale, 2255.
 where title accepted at the hearing, 2256.
 on a bill by purchaser, 2256.
purchaser having waived title, indemnity against mortgage, 2256.
declaration as to waiver of title, 2257.
setting aside voluntary settlement in favor of purchaser, 2257.
of agreement for lease, 2259.
inquiry as to leases tendered, 2259.
lease antedated to enable action on covenants, defendant to admit execu-
tion or date, 2260.
direction for lease to contain particular covenant, 2260.
of an agreement for family compromise, 2260.
of family compromise respecting real estate and stocks, 2262, 2264.
and reference of title, 2261.
on breach of bond to reconvey on certain conditions, 2261.
of agreement for policy of insurance, 2264.
inquiry as to title at the hearing, 2254.
declaration of right, and inquiry, 2255.
declaration, title accepted subject to compensation, 2255.
with compensation or abatement, 2257.

[The references are to the star paging.]

SPECIFIC PERFORMANCE — *continued.*

with compensation for non-release of dower, under agreement to convey
with covenants of warranty, 2259 n.
inquiry whether part, to which no title is shown, is material, 2257.
similar inquiry, without prejudice, 2257.
abatement for delay, 2258.
for deficiency, 2258.

of an agreement to execute a mortgage, 2216.

claim of benefit of statute of frauds in answer to bill for, 2116, 2117.

STATED ACCOUNT,

plea of, 2101.
directions for allowing, 2193.
decree setting aside, 2194.
directions for leave to surcharge and falsify, 2194.
to be conclusive, with leave to show errors, 2194.
to stand, with leave to surcharge and falsify, 2194.

STATEMENTS,

in bills, 1923, 1929, 1965, 2004, 2042, 2043.

STATUTE OF FRAUDS. (*See FRAUDS.*)**STATUTE OF LIMITATIONS.** (*See LIMITATIONS.*)**SUBPCENA,**

prayer for. (*See PRAYER.*)
form of, 389, 390, 391 and notes.

SUBSTITUTED,

service of decree or order, 2364.

SUMMONSES. (*See TABLE OF CONTENTS to this volume.*)**SUPPLEMENTAL BILL.** (*See REVIVOR AND SUPPLEMENT. REVIEW.*)

against assignee of bankrupt defendant, 2048.
in a patent cause, stating fact of extension of patent, 2049.
second, stating fact of surrender of patent and issue of new one, 2050.
after hearing by single justice, and reservation of case, 2052.
to an original and amended bill, 2054.
plea to, 2108.

SUPPLEMENTAL DECREE,

as to costs, 2204.

SUPPLEMENTAL STATEMENT,

form of, 2064.

SURCHARGE AND FALSIFY.

directions for leave to, 2194.

SURETY,

bill by, *quia timet*, to compel principal to pay a debt incurred by breach of covenant, 2040.

SURETYSHIP. (*See CONTRIBUTION.*)

decree for contribution between co-sureties and principal, in suit by surety, 2249.
account of payments by plaintiff as surety, and inquiry whether some of the co-sureties can contribute, 2249.
one co-surety unable to pay his full share; costs of resisting contribution, 2250.
decree for contribution, in suit by creditor, 2251.

TAXATION OF COSTS,

between parties, 2188.

without prejudice, how ultimately to be borne, 2188.

of plaintiff's and defendant's respective costs of parts of suit, 2189.

of defendant's costs, with set-off of part, 2189.

except so far as increased by particular claim, 2190.

up to a particular time, 2190.

and set-off against sum due, 2190.

and to distinguish and set-off, if petition and affidavits improper or of unnecessary length, 2191.

and payment out of funds in court, 2191.

and payment to solicitors, 2191.

of application, 2192.

TENANTS IN COMMON,

decree to stay waste by, 2307.

as to bill for account by one tenant in common against another, 1929 n.

[The references are to the star paging.]

TESTIMONY,

- notice of motion for leave to examine witnesses *de bene*, 2129.
- of appointment before examiner to take cross-examination of deponents in affidavit, 2130.
- to suppress depositions, 2132.

TITLE,

- definition of, 1877 n.
- of bills, 1877 and n.
- of demurrs, 2085.
- of pleas, 2094.
- of answers, 2109.
- of replication, 2123.

TOWN AND ITS OFFICERS,

- injunction restraining unauthorized payments of money by, 2323, and n. 2324.

TRADE-MARKS,

- bill to restrain the use of, 1987.
- decree staying using trade-marks as to tools or cutlery, 2317.
- perpetual injunction on the use of another's, 2318.
- perpetual injunction against shipping goods with plaintiff's trade-marks, on motion for decree, 2318.

TRANSFERS,

- injunction to restrain, 2320, 2324.

TRANSLATION,

- affidavit of correctness of, 2161, 2171.

TRESPASS,

- bill to restrain, where it causes irreparable injury, 1941.

TRUST,

- of will, bill to carry into execution, 2012, 2017.
- bills relating to, 2017.
- decree declaring no resulting trust, &c., 2280.
- breach of, 2295.
- funds, account and inquiry as to, 2296.

TRUSTEE. (See EXECUTORS AND TRUSTEES.)

- bill against, to obtain reimbursement out of an estate to the children of a testator who had by his will directed certain portions of said estate to be sold for the payment of debts and legacies, but which debts and legacies had, in whole or in part, been paid out of the income of the estate, which income had been devised to said children, 2021.

bill for removal of, and for appointment of new, 2028.

bill for appointment of new, under marriage settlement, in place of one desiring to be discharged, 2030.

petition for discharge of, and transfer of property to new, 2031.

decree ordering trustee under marriage settlement, of a married woman, who was insane, and whose husband was her guardian, to contribute from the trust property towards the expense of her support, on bill by husband, 2286.

order in a case where debentures were fraudulently disposed of by, 2295.

inquiry as to wilful default of, 2296.

charging with interest, 2297 and n., 2298.

with loss arising from negligence or abuse of trust, 2297 n.

directions for annual rents and compound interest, 2298.

costs, charges and expenses, beyond costs of suit, 2298.

same, to be raised by, 2299.

inquiry as to costs, charges and expenses, 2299.

costs in suit by, to obtain instructions, 2299.

decrees to appoint new, 2300.

improperly suffering trust funds to pass into hands of co-trustee, 2297 n.

who mingles trust money with his own, and uses it as his own, must pay interest on it, 2297 n.

form of decree relating to this, 2297 n.

chargeable where he improperly refuses to exhibit an account, 2297 n.

form of decree as to this, 2297 n.

statement in answer, of acquiescence by *cestui que trust*, 2116.

form of decree, where trustee purchases trust estate at an alleged undervalue, and claims for permanent improvements, 2061 n.

direction for payment of interest, 2187.

[The references are to the star paging.]

USUAL DIRECTIONS,

- directions for reference to Master, 2185.
 - where account directed, 2185.
- general adjournment to chambers, 2185.
- accounts and inquiries, 2185.
- liberty to state special circumstances, 2186.
- separate report, 2186.
- directions to settle conveyances, &c., 2186.
- further directions, 2186.
- reservation of interest, 2186.
- reservation of costs, 2186.
- direction for taxation and payment of costs, 2186.
- further consideration adjourned, 2186.
 - liberty to apply in chambers, 2186.
- where costs are partly dealt with by decree, 2187.
- payment of money by one party to another, 2187.
- payment of interest, to life tenant, 2187.
 - to trustees, 2187.
 - to corporation, 2177.
 - to treasurer, 2187.
- to married woman for her separate use, 2187.
- to husband in right of wife, 2187.

VERDICT,

- form of, indorsed on record of trial of issue, 2337, 2338.
- staying infringement, after verdict establishing patent, 2316.

WAIVER,

- of oath, 1885.

WASTE,

- charge of in bill, 1920 and n., 1926 n.
- charge of, and prayer for injunction to restrain, 1892.
- charge of, in bill for redemption, 1926 and n.
- no issue as to, unless charged in bill, 1920 n., 1926 n.
- if question of, not referred to Master he cannot consider it, 1926 n.
- bill to restrain, 2036.
- decrees respecting, 2305-2307.
 - staying, by tenants in common, 2307.
- must be charged in bill, to authorize a recovery, 1920 n., 1926 n.

WILFUL DEFAULT,

- charge of, in bill, 2061.
- plaintiff should charge, and establish case of, at the hearing, 2061 n.
- the decree should contain some declaration, or direct some inquiry as to, otherwise question not open on further consideration, 2061 n.

WILL,

- plea of, 2103.
- decree establishing, 2197, 2206.
 - except as to legacies partly failing, 2206.
 - except as to charity devise, 2206.
- construction of, directions to execute, 2199.
- decree declaring the rights of parties under, 2202.
- gifts by, and deed in charity, declared void, 2206.
- account on bill by party interested under, 2241.
- issue as to, 2336.
 - as to clause in, 2336.
- statement of, in bill, and of proof of, 1932, 1933.

WINDOWS,

- ancient, bill to restrain obstruction of, 2038.

WITNESS — WITNESSES. (See TESTIMONY.)

- under the present practice in England the evidence of all the witnesses is common to all the parties to the suit; therefore one defendant may cross-examine the witnesses of another, 2130 n.

[The references are to the star paging.]

WITNESS — WITNESSES — *continued.*

notice of motion for leave to examine *de bene*, 2129.
affidavit to obtain order for commission, 2167.

WRIT,

order for writ of *ne exeat* to issue, 2328.
of *ne exeat* discharged on defendant giving security, 2329.
of attachment for contempt, form of, 2150.
order, enforcing return of, 2366.
of injunction, 2324.
of sequestration, 2327, 2365.
of *subpoena*, 389, 390, 391 and notes.













3 6105 063 156 751